

<p>1 (Tuesday, 16 April 2024) 2 (10.01) 3 THE CHAIRMAN: You are okay, 4 Mr McGrail? 5 THE WITNESS: Yes, I am, sir. 6 THE CHAIRMAN: Yes. 7 MR IAN McGRAIL, recalled 8 Examination-in-chief by MR SANTOS, 9 continued 10 MR SANTOS: Good morning, sir. Good 11 morning, Mr McGrail. 12 A. Good morning. 13 Q. Going back to something you said 14 yesterday, you mentioned that you had 15 a daybook at the time. Do you know where 16 that daybook is? 17 A. No, I left it at the station when I left in 18 a haste on 9 June. 19 Q. Can we now turn to B/188, please, bundle 20 B/188. This is the meeting of 13 May which 21 we were dealing with yesterday. And I want 22 to take you to something that the Attorney 23 General says. He refers about six boxes 24 down, he says: 25 "I am still, and it is the only reason why I am</p> <p style="text-align: center;">Page 1</p>	<p>1 possible." 2 What were your thoughts about this comment 3 by the Attorney General? 4 A. He was very nervous that the Chief 5 Minister had been mentioned in the 6 pre-interview disclosure to Mr Lewis. In 7 other words, the investigating officers were 8 asking Mr Levy to produce any 9 communications it had with the Chief 10 Minister and Mr Llamas seemingly took 11 offence and was very nervous about that. 12 Q. Can we now move to B/198, please. Just 13 halfway down the page, just over halfway 14 down the page, there Mr Llamas says the 15 following: 16 "Let me ask you one question in relation to 17 that. From Haim Levy's point of view, what 18 is the best outcome of doing the interview on 19 Monday?" 20 And you say: "Going to leave this for you, 21 Paul." Superintendent Richardson says: 22 "From his point of view, from his 23 perspective, he would have to give 24 an explanation which accounts for what he 25 has done, which holds some degree of water.</p> <p style="text-align: center;">Page 3</p>
<p>1 involved in this, it is that this is highly 2 sensitive as point 9 here." 3 Which is the sheet that was handed to 4 Mr Levy on 12 May. Correct? 5 A. I believe it is the pre-interview 6 disclosure. 7 Q. Yes. And point 9 referred to 8 communications with the Chief Minister. 9 A. I believe so, yes. 10 Q. And he then says a little bit further down 11 in the main box: 12 "In my view, it is just a view, completely 13 unjust, unjustifiable to me that this man 14 should be even appearing on a formal 15 document and I will not, if it is not 16 legitimate, I want that to disappear 17 immediately. My concern here is the 18 reputation of this jurisdiction and that passes 19 to the reputation of our Chief Minister, 20 especially in this moment in time, and for 21 that I shall fight until I die." 22 And you respond: 23 "The thing is, you have the magic wand here, 24 you have it. I am sure and if it is the case I 25 would ask you to get it out of this as soon as</p> <p style="text-align: center;">Page 2</p>	<p>1 In other words, I have been misled. I was 2 told this. He has already said this 3 unofficially through other sources." 4 And then the DPP says: "I do not know what 5 I was doing. I did not manage the platform." 6 And Richardson says: "I have been, I have 7 been misled. I have been --" The DPP says: 8 "I saw this opportunity." And a conversation 9 goes on discussing what might be said on the 10 Monday. But I just want to focus on what 11 Mr Llamas says at the beginning: 12 "From Haim Levy's point of view, what is 13 the best outcome of doing the interview on 14 Monday?" 15 What did you understand the Attorney 16 General to mean by that question? 17 A. I think my understanding is reflected in 18 the responses by Mr Richardson and 19 Mr Rocca. It's basically what should 20 Mr Haim Levy explain in interview to 21 achieve his best outcome for him. I believe 22 that Mr ... we digressed slightly after that part 23 of the conversation, we digressed but 24 Mr Llamas brings us back, brings us back 25 and reminds us, let's come back to what is</p> <p style="text-align: center;">Page 4</p>

<p>1 Mr Levy's best outcome here. He brings us 2 back to this. 3 Q. If we go to 208, this may be what you are 4 referring to at the bottom of the page. He 5 says: 6 "So, best case scenario for Monday, I will put 7 two scenarios for Monday. Well, there are 8 more, but he comes, he co-operates, he 9 brings material and he sort of persuades you 10 that he is not worth pursuing. But even if it 11 got to that you would still not hand over the 12 phone because you want to, you are going to 13 want to." 14 And Mr Richardson replies: "We need to see 15 how the case is going to finish." And then he 16 says: "and the worst-case scenario, it goes 17 terribly, he leaves, all hell breaks loose." 18 Did you agree that Mr Levy might be able to 19 persuade the RGP ... sorry, let me rephrase 20 that. Did you agree that the scenario of 21 Mr Levy persuading the RGP that he was not 22 worth pursuing was the best-case scenario? 23 A. The RGP, the investigating team, always 24 kept an open mind. And we were alive to the 25 potential reputational issues because of</p> <p style="text-align: center;">Page 5</p>	<p>1 the time was that he was interested in seeing 2 how Mr Levy could come out best. 3 Q. Yes, but my question was that you say 4 the Attorney General then asked you what JL 5 should say in order to achieve the best 6 possible outcome. There is a difference 7 between what he said and the impression that 8 he gave. Would you agree that he did not ask 9 you what JL should say in order to achieve 10 the best possible outcome? 11 A. I agree that the word "say" there is, you're 12 right, however, but the overarching concept 13 is what still remains very prominent, was at 14 the time prominent and still remains 15 prominent, that it was batting for Mr Levy. 16 Q. Can we now -- 17 A. It's a question that an attorney general 18 first and foremost I do not think should even 19 have put that into consideration. How can 20 a suspect, what can a suspect do to get the 21 best outcome? It does not ring any positive 22 vibes. 23 Q. Can we move now to B/225, please. This 24 is after the meeting. Everybody other than 25 you and the Attorney General leaves. Is it</p> <p style="text-align: center;">Page 7</p>
<p>1 Mr Levy's status, of course we were. So, 2 whilst not being biased in any way thinking it 3 was a natural consideration that if Mr Levy 4 was able to clear up any of the ambiguities 5 that were being investigated, that would 6 probably serve many purposes. 7 Q. Can we go to A/19, please, which is your 8 witness statement, your first witness 9 statement, which you should still have in 10 front of you. A/19, paragraph 58.22 at the 11 very bottom. You say in your first witness 12 statement: 13 "Surprisingly, the AG then asked me what JL 14 should say in order to achieve the best 15 possible outcome for himself during the 16 forthcoming interview." 17 On reflection, and having looked at the 18 transcript, would you agree that that is not 19 quite what the Attorney General said? 20 A. When I write this statement I am privy to 21 the end product of how I was treated and 22 what I consider was inappropriate 23 interference and influence and the way the 24 AG steered that. So, as far as I am 25 concerned, the impression that he gave me at</p> <p style="text-align: center;">Page 6</p>	<p>1 just you and Mr Llamas in the room? 2 A. Yes, he asked me to remain behind, yes. 3 Or indicated with his hand. Obviously he 4 does not say it there in the transcript -- 5 Q. No, of course. 6 A. -- but he must have asked me to remain 7 behind. 8 Q. And he says as follows: 9 "Okay, Ian, we now have a problem. The 10 Chief Minister is adamant that you said 11 yesterday to both of us you were acting on 12 the search warrant on advice of the DPP." 13 And you say: "On advice for the 14 investigation all along." And he says: "Well, 15 he says, and you have --" 16 THE CHAIRMAN: Mr Santos, can we get 17 the right bit of the transcript? 18 MR SANTOS: Sorry, it is the entry at 19 01.48.28 and I have just read out the first two 20 boxes. And then the AG says: "Well, he 21 says, and you have confirmed now that such 22 advice does not exist." And you say: 23 "I asked my lot. This is being cleared by the 24 DPP. This is the way he has read the 25 rationale as to why Haim Levy has to go</p> <p style="text-align: center;">Page 8</p>

2 (Pages 5 to 8)

1 through the interview process. The
 2 suspicions, what the level of suspicions are,
 3 he has been given all that. He has read it. It
 4 says, 'Look, this is what this man has done'
 5 and he agrees that."
 6 And Mr Llamas says: "But he says he never
 7 agreed." And you say: "Fine." And
 8 Mr Llamas: "I don't, I don't --" And you say:
 9 "I have never been, I have never been privy
 10 to those conversations, but what I know is
 11 that he has been advising the team and that is
 12 what I am referring to that. But I also said
 13 that I am not shrugging that responsibility. I
 14 am saying that we have been in
 15 consultation."
 16 He says:
 17 "No, no, what you told me and him
 18 yesterday, you told us yesterday that the ...
 19 you say know the."
 20 And he says: "The decision to do search
 21 warrant was on the advice of the DPP." And
 22 you say:
 23 "I, I cannot remember the words, Michael.
 24 What I remember saying is that, and I have
 25 said it this, I do not need to shrug

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1 responsibilities, but this matter had been
 2 dealt with in consultation with the DPP. That
 3 is what I have said and I am referring to
 4 an investigation and a relationship that has
 5 been back and forth on a number of times.
 6 That is what I am referring."
 7 And Mr Llamas says:
 8 "But what you cannot categorically say, I
 9 think, is that you, you or Paul or any other
 10 member of the team --"
 11 And you say: "Mm, it was with --" And he
 12 says: "Ask the DPP, do you agree that
 13 a search warrant is the appropriate way in
 14 doing this?" And then the DPP replied
 15 saying yes. And you say:
 16 "Paul has told me that there was
 17 conversations about the search warrant and
 18 before what has happened [he says] but he
 19 insists."
 20 You say:
 21 "This is okay, that. He may insist that he did
 22 not say so, they held conversations because
 23 this is what Paul tells me."
 24 And Mr Llamas says: "Basically because I
 25 wanted to defuse the situation." You say:

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1 "Of course." He says: "And this is going to
 2 be a big sticking point with Fabian and I will
 3 have to tell him, um, um." You say:
 4 "Michael, I do not come here to create
 5 problems." And he says: "But you have
 6 created them, Ian." You say: "But I cannot
 7 understand how they can think that this is ...
 8 there is any malice, there is any."
 9 So the very next day you are saying to
 10 Mr Llamas that you cannot remember the
 11 words that you used. Is your position that
 12 you can now remember what you said in the
 13 meeting of 12 May?
 14 **A. I can't remember the words, but I**
 15 **remember the context. And it is as I have**
 16 **explained.**
 17 Q. Can we now go to the next page, B/229 ...
 18 sorry, three pages on, B/229, and at the very
 19 bottom Mr Llamas says:
 20 "Well, I will try to calm things down, which
 21 in all honesty will be difficult and I cannot
 22 control Hassans. I will try and control things
 23 here and hope that we can get to wherever
 24 this goes to as soon as possible and that these
 25 days go by and things calm down and that

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1 Haim Levy goes in for interview on Monday
 2 and that they challenge you. The best result
 3 here is that they challenge your intention of
 4 the phone and let a judge decide. I think that
 5 is a good outcome and that is why that letter
 6 is so important. Well, the one you are going
 7 to send off today. And with Fabian, I will
 8 now explain what you meant was a context.
 9 That is what you meant. Or else he is going
 10 it call him and --"
 11 You say: "Fine, fine." He says: "It is all
 12 going to blow up." You say: "The DPP has
 13 been advising." And he says:
 14 "Generally, even though he was not
 15 specifically asked, do you agree that he
 16 replied yes, but there was not a context where
 17 they said where the search warrant was
 18 mentioned? He was of the view that at some
 19 point."
 20 And you say:
 21 "The way I understand the Chief Minister, I
 22 did not know that that was a sticking point,
 23 the Chief Minister claiming that there is no
 24 crime on the conspiracy is to defraud. I
 25 would not start arguing but there is evidence

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<p>1 to suggest that, so I say to myself they may 2 be feeding this man with incorrect 3 information. He is talking with hearing one 4 side only, the same as happened to you. You 5 may have seen something." 6 Is it fair to say that at that stage the Attorney 7 General was still in support of an interview? 8 A. Um, yes. That meeting on the 13th we 9 left, um, with the police activity not changing 10 in terms of the interview was still scheduled 11 as planned. 12 Q. And would you say that he was being 13 supportive at that point? 14 A. I can't say that, no. There was, it was 15 palpable, he was more concerned about 16 a potential storm that was coming because of 17 the actions. Um, and not necessarily at no 18 time did he reassure me saying, "Look, don't 19 worry, we will fight this." Um, so no, I can't 20 say that he was supportive. 21 Q. Let us now turn to the meeting of 15 22 May 2020, which was with the same 23 individuals as well Inspector Wyan. At 24 B/270 the Attorney General starts the 25 meeting by saying at 5.34, towards the</p> <p style="text-align: center;">Page 13</p>	<p>1 Q. Sorry, but my question was that at the 2 time did you ... well, my question was: do 3 you agree that at that time the RGP was 4 heading towards a major collision? 5 THE CHAIRMAN: Those words are not his, 6 are they? 7 MR SANTOS: No. 8 A. That was, what I understood was that 9 there was going to be a challenge, but I did 10 not expect it to reach the levels that it did. 11 Q. Yes. Did you want to avoid that collision 12 or challenge or were you willing to push on 13 regardless? 14 A. I was willing to push on with 15 investigation. I accept that challenges will 16 come along the way, that's, um, that's a given 17 in this type of work. Um, but I did not 18 expect ... or I will put it this way. I would 19 have expected a more robust approach legal 20 support wise for the RGP. 21 Q. If we go over the page, 271, the entry at 22 8.17, Mr Llamas agrees with something you 23 say and then says: 24 "What we think would be helpful for the 25 management of the whole thing is if that</p> <p style="text-align: center;">Page 15</p>
<p>1 bottom of the page, he says: 2 "Okay chaps, Christian and I have been 3 spending quite a bit of time together today. 4 We are heading towards a major collision 5 here. I think it is clear whether you agree 6 with what they are saying or not. It is our 7 view that it is clear that this is going to 8 become very nasty very quickly and we are 9 facing a potential escalation of the whole 10 thing and therefore we think that is best 11 avoided. We think and we just want to 12 discuss with you now whether there are 13 things we can do where you can achieve 14 what you want to achieve whilst avoiding 15 a collision or whether you maintain 16 yourselves in exactly the same position as 17 you were the last time we met." 18 Do you agree that the RGP was heading 19 towards a major collision? 20 A. I didn't expect it to develop in the way it 21 did with an incessant barrage of letters from 22 Hassans, very aggressive litigation. But, and 23 obviously now I am aware, but behind the 24 scenes there was far more serious movement 25 by that day.</p> <p style="text-align: center;">Page 14</p>	<p>1 interview would still go ahead but not have it 2 under caution." 3 Had this proposal been floated or raised by 4 the RGP before this meeting? 5 A. No. 6 Q. Had it been raised with you before this 7 meeting? 8 A. No. 9 Q. So, was it the Attorney General's own 10 proposal? 11 A. He explained it very clearly, that the 12 problem was treating Mr Levy as a suspect, 13 the interview under caution, and even more 14 concerningly for him, the question of his 15 mobile phone, mobile device. 16 Q. And what was your immediate reaction to 17 this proposal? 18 A. Remember that I have had the experience 19 of 12 May plus the other snippets that fed to 20 that mindset that I developed, which 21 suggested and had more or less have it 22 confirmed in my head that the AG was not 23 being impartial. And therefore that struck 24 me. He was trying to sidetrack the process. 25 Q. In your eyes what were the pros and cons</p> <p style="text-align: center;">Page 16</p>

4 (Pages 13 to 16)

1 of the proposal? (Pause).

2 **A. The cons were definitely that the actions,**

3 **if followed by Mr Levy ... if followed by the**

4 **investigating team, would be subject of**

5 **challenge in the courts. The RGP could be**

6 **facing claims of unfairness, of treating**

7 **people differently. Um, and the pros, I can't**

8 **see them. I could not ... I can't say that I saw**

9 **any pros at the time, given that if we are**

10 **investigating a crime and there is a suspect**

11 **and you get an account under caution, and**

12 **then you want to convert that into a witness**

13 **account, I can see the pro there, but we were**

14 **not at that stage because we were not having**

15 **had a chance to speak to Mr Levy at all yet.**

16 **But in that respect there was because with**

17 **an open mind you end up assessing what**

18 **a suspect may say under caution, which then**

19 **may be of more value as to be converted into**

20 **a witness status.**

21 Q. And at 273 Superintendent Richardson

22 came up with an alternative proposal, which

23 was to ask for a written account rather than

24 an interview under caution. He says at 16.15,

25 right at the bottom:

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1 "Sorry, sir, to interrupt you. I have had

2 a thought. If that is the case get him to

3 submit his version of events. Do not come in

4 for interview under caution. We are not

5 going to ask for it. Give us your version of

6 events in writing [says the DPP]."

7 He agrees and you say:

8 "But let me look at it because eventually you

9 want to ask questions on that version or we

10 are going to be back to square one."

11 Were you agreeing with Superintendent

12 Richardson at that point?

13 **A. It was a proposal that we had, I believe,**

14 **seen in practice before where suspects**

15 **provide unsolicited statements to the police,**

16 **either in advance of an interview, or they**

17 **remain silent during the interview and then**

18 **they provide a statement post to the**

19 **interview. And I think that is what the tenor**

20 **of Mr Richardson's proposal was around.**

21 **What I qualify is that if there was going to be**

22 **an unsolicited statement provided, that would**

23 **not clear the pathway for an acceptance**

24 **without further probing if it was required and**

25 **we were then back to square one in terms of**

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1 **sitting Mr Levy in an interview room under**

2 **caution.**

3 Q. So were you agreeing or disagreeing with

4 him?

5 **A. I was listening and it was being debated.**

6 **At that point I don't think I can say that I**

7 **agreed or disagreed.**

8 Q. Superintendent Richardson then

9 explained that the RGP could assess the

10 content of that statement and then decide

11 whether to put questions to him in

12 an interview under caution, which is I think

13 what you were just referring to. And then he

14 also says:

15 "We could delay carrying out any interview

16 until we consider the content of that, the

17 written statement."

18 Then at 295 you say ... sorry, Richardson

19 says, sorry, at 1.11.13: "But all that other shit

20 has got to go away." Mr Llamas replies:

21 "What has to go away?" Richardson: "The

22 six letters a day, the Exocets flying across."

23 You say the Gaza Strip, Mr Rocca West

24 Bank." Inspector Wyan: "But it has to be

25 sufficient in evidence so that when the others

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1 go to court that."

2 I just want to ask, was one of the reasons that

3 you agreed to this proposal an interest in

4 stopping the letters from Hassans which

5 contained allegations of misfeasance?

6 **A. I think it is very evident from the first**

7 **meeting that big chunks of that meeting were**

8 **dedicated to Mr Richardson's concerns and**

9 **my concerns about the allegations that**

10 **Hassans were making in terms of criminal**

11 **liability, making criminal allegations against**

12 **the RGP. And I think that worried the team**

13 **and significantly worried me certainly, but**

14 **Mr Richardson appears to be very, very**

15 **affected by those. And so, um, it seems that**

16 **sort of bartering begins. This is a point**

17 **where we are at the market and we think, you**

18 **know, it's trying to get best outcomes, as**

19 **a result of those threats.**

20 Q. At 282 there was a discussion with the

21 DPP about whether Mr Levy is likely to have

22 destroyed evidence and the comparison is

23 made to a case involving another lawyer in

24 Gibraltar. And then Mr Rocca at the DPP

25 says the following, at just under 40.30:

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<p>1 "Levy does, Levy does, Levy has known for 2 months. It is chalk and cheese, Paul. I think 3 it does not work. Of course you are going to 4 go ex parte. You have got drug traffickers, 5 you have got ..." 6 So he is drawing a distinction between the 7 two lawyers. Had you considered this 8 counterargument when deciding whether to 9 go for a warrant that Mr Levy had known 10 about the investigation for months? 11 A. I didn't because I didn't dip into that 12 detail. But what I later find out, and I think 13 Mr Richardson makes a very sort of brief 14 note, that he didn't want to drop the DPP in it 15 because it was seemingly that the DPP had 16 softened, or was softened, at that point 17 compared to his previous dealings with him. 18 So, but Mr Richardson was prudent enough 19 not to raise and put Mr Rocca in the spot 20 there. But from that I take, and I've got no 21 reason to challenge that, is that 22 Mr Richardson was previously confident that 23 the DPP was supporting the question of 24 Mr Levy having to come in. 25 Q. At various points in this meeting the</p> <p style="text-align: center;">Page 21</p>	<p>1 Mr Richardson was trying to undo the ... how 2 could this be undone if Mr Levy has already 3 been cautioned and then, sort of, um, because 4 of is this standpoint of the Attorney General, 5 change it so as to appease Mr Levy. It just 6 could not ... they just could not sit ... it does 7 not sit right. 8 Q. But how would you describe it? Because 9 I used those words "influence or pressure". 10 How would you describe what he was doing? 11 A. He was, again, bear in mind that I was 12 very, very conscious and was still affected 13 from the events of the 12th. So I had ... I had 14 my thoughts were that this man is steering 15 this away from Mr Levy. 16 (10.30) 17 Q. At A285 we have got Mr Llamas's 18 account, and he says (and paragraph 59), "Mr 19 McGrail considered that he was immune to 20 having his actions disapproved of or 21 criticised and that he equated both to 22 improper interference with the conduct of a 23 criminal investigation and a violation of 24 police independence." Do you maintain that 25 it was interference rather than just fair-</p> <p style="text-align: center;">Page 23</p>
<p>1 Attorney General said that Mr Levy did not 2 want to go to interview under caution. If we 3 go to B/277, the second from the bottom, 4 26.13: 5 "Here, what is creating the bad atmosphere, 6 well bad is an understatement, what is 7 creating the tension here is the concept of 8 Haim being suspect and therefore being 9 interviewed under caution and we think that 10 if for the sake of the management of this case 11 and you can get the interview not treating 12 him that way, there is a possibility of 13 achieving what ... that you can achieve your 14 aim of getting the interview with him but that 15 stigma is very oppressive." 16 And then at 287 he says: "The issue here is 17 the caution." Do you consider that the 18 Attorney General was attempting to influence 19 or pressure you not to interview Mr Levy 20 under caution? 21 A. Yes. Yes, it was clear, we made it clear 22 to him, that Mr Levy, the threshold as to the 23 suspicions cast around him had been already 24 surpassed in terms of we had already had 25 a warrant from the courts and so</p> <p style="text-align: center;">Page 22</p>	<p>1 minded criticism? 2 A. In - in his account, the way I see it - or 3 rather, in the transcripts, in the way I see it, 4 he doesn't - there's a flow. Let me try and 5 explain this, so there's a flow between those 6 three meetings. At the first meeting, we left 7 (albeit upset for the - the events of the 8 previous day) - we left with the impression 9 that we were going to continue to interview 10 Mr Levy. That changed, and he managed to 11 influence, but with the baggage that that 12 influence bro-- brought, and rising from the 13 threat of litigation, the reaction by the Chief 14 Minister, the misconstruing by the Attorney 15 General. It was a difficult situation. I had to 16 rely - well, the RGP had to rely - on these 17 two gentlemen: the DPP and the - and the AG 18 for a potential prosecution. That - that 19 reliance was key, and it wasn't - it wasn't very 20 strong. So, we have to - to - when you put all 21 that together, you would call it influence but 22 I'd describe it more as interference. 23 Q. At 291, second box from the top, you say, 24 "That is a risk but not - and I welcome the 25 fact that you're consulting it with us, because</p> <p style="text-align: center;">Page 24</p>

6 (Pages 21 to 24)

1 in other days, in other years by the AG before
 2 the DPP existed would have said - he would
 3 have been the one who calls the shots on
 4 whatever actions, I suppose, after the charge,
 5 but I'm really grateful that you're consulting
 6 this and getting our views. Do you agree that
 7 at that point you seem to be welcoming the
 8 conversation between you and the Attorney
 9 General?
 10 **A. I was being very prudent, and I was**
 11 **trying - very conscious that we needed**
 12 **bridges to be repaired, I needed to - to**
 13 **continue - hope that there was going to be**
 14 **support, so of course I was... hopeful.**
 15 Q. The DPP also made a similar point about
 16 proceeding without the caution. Do you
 17 consider that the DPP was attempting to
 18 influence, pressure or interfere with the
 19 investigation?
 20 **A. My view is that because of Mr Llamas's**
 21 **very limited knowledge on criminal matters**
 22 **he was conf-- he was - and yet I think he**
 23 **mentioned that he was learning criminal law**
 24 **on the hoof, and he direct-- he pointed to the**
 25 **DPP being his teacher. My view is that the**

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1 **DPP was conveying Mr Llamas's view, but**
 2 **probably with more - the more criminal**
 3 **lawyer input, as opposed to Mr Llamas who -**
 4 **I don't know, I don't think is that acquainted**
 5 **with criminal matters.**
 6 Q. Now let us move to the 20 May meeting.
 7 This was between you, Mr Richardson, Mr
 8 Wyan, the Attorney General and the DPP.
 9 And, there has been a response from Hassans
 10 at that point, B322. And Mr Richardson
 11 says, "They've really turned that on its head,
 12 from your conversation with him to turning
 13 round to the Commissioner and say now: the
 14 Attorney General has informed me that you
 15 have agreed to treat him as a witness. I
 16 mean, that is". And you further on say,
 17 "We've bent over, which we would not
 18 normally have done". What did you mean by
 19 that?
 20 **A. The fact that Mr Levy had been treated**
 21 **probably far more - in a different manner to**
 22 **other - other people. And... and I think that**
 23 **by that stage we were also considering**
 24 **releasing more prediscl-- pre-interview**
 25 **disclosure, which they were requesting.**

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1 **Again, which was not the norm, but we were**
 2 **juggling with the benefits of that in the - in**
 3 **the sense that if we provided them with**
 4 **slightly more information we could convince**
 5 **them to come in in a more (?) and for them to**
 6 **be more confident to come in voluntarily, to**
 7 **continue with - to assist with the**
 8 **investigation. But that - even with that, it**
 9 **didn't work.**
 10 Q. You will be aware of the communications
 11 that have been disclosed to this Inquiry
 12 between Mr Levy and Mr Baglietto on the
 13 one hand, and the Chief Minister and the
 14 Attorney General on the other. Did the Chief
 15 Minister make you aware at the time that he
 16 was speaking to Mr Baglietto or Mr Levy
 17 about the investigation?
 18 **A. Absolutely not.**
 19 Q. Yes. The question was related to the
 20 Chief Minister.
 21 **A. No, I - I - Mr Picardo never told me that**
 22 **he was speaking with Levy on the matter, or**
 23 **Mr Baglietto. But, the comment that he**
 24 **made - the passing comment, and which was**
 25 **unrelated, which said: look, you - you have -**

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1 **I've been speaking to Mr Levy this morning**
 2 **on - the reopening of the places of worship.**
 3 **That indicated that he had been, and so - and**
 4 **that raised suspicions, obviously, afterwards,**
 5 **that he had been in contact with him about**
 6 **the warrant on the day that the officers were**
 7 **there. Because it was a - an unrelated**
 8 **comment, and I took it that - that he wanted**
 9 **to perhaps explain any potential finding -**
 10 **forensic finding in Mr Levy's phone there**
 11 **was contact with him. He was already**
 12 **providing that explanation beforehand.**
 13 Q. Were you aware - did the Attorney
 14 General make you aware that he was
 15 speaking to Mr Baglietto or Mr Levy about
 16 the investigation?
 17 **A. Well, Mr - Mr Llamas had asked me to**
 18 **attend a meeting with Mr Baglietto, at Mr**
 19 **Baglietto's request. That was late on the**
 20 **12th... past 11 o'clock, but I only found out**
 21 **on the - on the - on the following day, on the**
 22 **13th. And, I initially said that I was willing**
 23 **to attend, but I then took counsel and - and**
 24 **thought about it carefully, and - and - and**
 25 **even the DPP agreed that that would have**

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<p>1 been inappropriate, but Mr Llamas did not 2 feel it was inappropriate. So I did not attend, 3 I said I would attend a meeting with the AG, 4 but not -- 5 Q. But were you aware that he was 6 nevertheless going ahead with that meeting? 7 A. Whether, I - I do not know whether he 8 went ahead with it or no. I do not know. 9 Q. And, did he otherwise make you aware 10 that he was in contact with Mr Baglietto? 11 A. Yes, he gave me the impression that, 12 beyond the letters that was being exchanged, 13 because again he was - he was saying: this - 14 the problem here is the caution, and - and the 15 only way he would have known the problem 16 is if the other side is telling him. And - and I 17 got - well, the evidence shows - in fact the 18 evidence shows that he was in contact, so my 19 suspicions were confirmed. Well, my 20 thoughts at the time were confirmed. 21 Q. We have seen that on the evening of 13 22 May 2020 the Attorney General replied to a 23 message by Mr Levy complaining about 24 being "hung out to dry", albeit not by the 25 Attorney General, in respect of the search</p> <p style="text-align: center;">Page 29</p>	<p>1 A. I believe they did, yes. 2 Q. How did you retain those files? Was it on 3 paper, on disk, or...? 4 A. I had all my emails backed up onto a hard 5 drive, an external hard drive. And there were 6 some files, paper files which, after I - I 7 provided the evidence to the Inquiry I dest-- 8 destroyed. The hard drive, I returned to the 9 RGP. 10 Q. Can we now move to the final weeks of 11 your time as Commissioner of Police. You 12 had a meeting with Dr Britto on 22 May 13 2020. If we turn to C6571, please. You 14 message Dr Britto on 21 May at 11.46, 15 asking to meet the following morning. Why 16 did you ask to meet Dr Britto? 17 A. Because I was feeling the heat, really, 18 really badly. This was on the back of the 19 receipt of the section 15 request from the 20 Attorney - from the Chief Minister, where he 21 in no uncertain terms told me that the 22 Government had lost confidence in me. That 23 - that was the - the reason why I wanted to 24 speak to Mr Britto. 25 Q. Did you know that the GPA had met, by</p> <p style="text-align: center;">Page 31</p>
<p>1 warrants. The Attorney General replied 2 saying, "Don't worry". What is your reaction 3 to that exchange. 4 A. It's unreal, unreal. That an Attorney 5 General tells a suspect "Don't worry", it's - 6 for me, it's unheard of, and to - I've never 7 come across the situation before. Totally and 8 utterly inappropriate. And - but then again, 9 when you look at the whole picture it - it 10 makes sense. He was sat in (?) Mr Levy's 11 corner. 12 Q. On 24 March 2023, your lawyer Charles 13 Gomez said that you had after your 14 retirement retained some personal files, 15 because you were concerned that a criminal 16 conspiracy was being covered up. Was the 17 criminal conspiracy that Mr Gomez referred 18 to the alleged conspiracy investigated in 19 Operation Delhi? 20 A. The Delhi conspiracy was - was on its 21 own, and then there was a conspiracy to stop 22 Delhi, yes. That's my suspicions. 23 Q. Did the personal files that you retained 24 include Operation Delhi papers, or other 25 material relating to Operation Delhi?</p> <p style="text-align: center;">Page 30</p>	<p>1 that point? 2 A. At all. 3 Q. So, you were not aware of the decision 4 that the GPA had made? 5 A. Not at all. 6 Q. Was the first time you heard of it when 7 Dr Britto told you? 8 A. Yes. 9 Q. You met him on 22 May; B353 is the 10 transcript of this meeting. Did Dr Britto 11 know that you were recording the meeting? 12 A. No, he didn't. 13 Q. Why did you think it was appropriate to 14 record your meeting with him? 15 A. When he - by that time, I say I was 16 feeling the heat, probably more than - than 17 ever, at that point. The fact that the - the 18 section 15 data was saying that the 19 Government as a whole was - had lost 20 confidence in me was of serious - caused me 21 serious concern and worry. And I - I reported 22 to Mr Britto previously the question of the 23 fractured relationship with the Chief Minister 24 and Mr Llamas, and the reason for that. And, 25 call it a hunch, call it a - well, I didn't plan to</p> <p style="text-align: center;">Page 32</p>

8 (Pages 29 to 32)

<p>1 record anything, I just - as soon as I saw the 2 gentleman arrive and his face grey, serious, 3 like I'd never seen him before, that triggered 4 something in my head: something is not 5 right. Something is very wrong here; 6 something's bad. And I asked him to sit in 7 the armchair in my office, I had two 8 armchairs, and I went out to activate the 9 phone because I had to protect my - my - my 10 interests. 11 Q. If we could look at 356 please, which is 12 about 12 minutes into the meeting. There is 13 an entry at 12.56 where you say, "Have I lost 14 my job?", and the answer comes back, "Right 15 now, no. Right now, no." You say, "So that - 16 what's the situation, then?" And the GPA 17 Chair says, "The letter you're invited (?) - we 18 have invited you to resign." And he says, 19 "But if you don't feel that you can", you say 20 "But what, you're giving me seven days to 21 make a decision?" He says, "To make - no, 22 to make representations, look", you say, 23 "Yes, but what effect does that letter have? 24 Do I no (?) - have to hand in everything 25 here? Have I got to go? Or I don't, no (?)".</p> <p style="text-align: center;">Page 33</p>	<p>1 Q. I mean, just to explain: I am taking you to 2 the parts that find the question, but I am not 3 putting a case to you one way or another. I 4 am just giving you the opportunity to respond 5 to that description. I have read the transcript, 6 you have read the transcript, the Chairman 7 will read the transcript (probably has read the 8 transcript). I just want to give you the 9 opportunity to comment on the description of 10 it as an invitation. 11 A. No, it was not an invitation. I took it 12 more like: you need to go, or else you're 13 going to get fired. 14 Q. Were you familiar with the provisions of 15 section 34 and section 13 of the Police Act at 16 that stage? 17 A. No, I wasn't. I'd never had a - a reason to 18 be familiar with them. I never thought that I 19 would have to - to consult them at all. 20 Q. At 357, at 1424 you say, "I have been 21 threatened by the Chief Minister", and then at 22 1526 you say, "I've never had that feedback 23 from the Governor. I've had the feedback 24 from the Chief Minister arising from certain 25 executive actions that we carried out on,</p> <p style="text-align: center;">Page 35</p>
<p>1 And he says, "No, no, no. You're not 2 suspended or anything. You now have to - 3 it's an invitation, it's an invitation. I think the 4 other way would be, you would lose your job 5 if the Governor". Then, at 358 Dr Britto says 6 something similar. At the bottom of the 7 page, "No, if they say - put it this way: if you 8 say right now you're going to ignore this, it's 9 an invitation - it's an invitation. You're not 10 being forced, it's an invitation. I'm 11 presuming that they would then trigger the 12 section 13: the Governor removes you. I am 13 assuming, I haven't been told that. There 14 must be a reason why the preference is to do 15 it this way: to give you the option. But why 16 don't you go home, Ian." Did you agree with 17 Dr Britto's characterisation that this was just 18 an invitation? 19 A. No, it - it's, with respect you have 20 selected a couple of sentences there, or 21 comments. The meeting has to be read in its 22 entirety to - to get the real feel of it, and that - 23 the segments that you've extracted support 24 your question, but does not support the tenor 25 of that meeting, so...</p> <p style="text-align: center;">Page 34</p>	<p>1 which I think I briefed you on. And that is 2 the catalyst behind this all, in my view, but 3 I've not had a reaction from the Governor." 4 When you say, "executive actions that we 5 carried out on", was that a reference to the 6 search warrants? 7 A. It was indeed, yes. 8 Q. When you briefed Dr Britto on 12 May, 9 or shortly thereafter, had you briefed him 10 about the warrants themselves? 11 A. Yes, I gave him a - a round-up of what 12 had happened, and how the Chief Minister 13 and the Attorney General had reacted. And, 14 his response to that was more or less like 15 mine, with the hope that tempers would 16 dwindle and - and things could then calm 17 down and we carry on. 18 Q. Then if we go to 361, the final box on 19 361. You say at the bottom, "This has all 20 been triggered off from the impromptu 21 meeting that I was called to in the Chief 22 Minister's chamber with the AG. That is 23 where it all stems from, there's no doubt at 24 all, at all, at all, that that is where this is 25 stemming from. The fact that he has not</p> <p style="text-align: center;">Page 36</p>

1 been in agreement with the way we have
 2 been handling the case of the - involving
 3 Haim Levy. I was threatened there and then,
 4 and I was told that he was going to call up -
 5 in other words, there was, like, total
 6 interference with the operational running.
 7 That is against the law, itself. Look, now this
 8 is how the issues". Why did you form the
 9 view immediately that there was no doubt at
 10 all that this stemmed from Operation Delhi?
 11 **A. Because, right up until 12 May there had**
 12 **been no issues. I had had certainly no issues**
 13 **at all with the Attorney General, I enjoyed a**
 14 **very, very good relationship with him. And,**
 15 **so did I enjoy it with - with the Chief**
 16 **Minister. And I had a professional**
 17 **relationship with Nick Pyle, with very**
 18 **limited contact during his time as Governor,**
 19 **or indeed during his time as Deputy**
 20 **Governor and member of the GPA, and I'd**
 21 **not had any adverse reaction from any of**
 22 **them until 12 May. So, the question of the**
 23 **collision at sea, for example, which had - had**
 24 **happened three months earlier, and it (?)**
 25 **hadn't had any feedback from them other**

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1 **than positive feedback. It hasn't been (?) not**
 2 **set right with - with - did not square off with**
 3 **the way they were behaving now. And, that**
 4 **was why I say that the catalyst was the - the -**
 5 **the events at the Cabinet Room on 12 May.**
 6 Q. Did you consider whether it might have
 7 been a combination of factors?
 8 **A. No, no. The - and, the evidence there**
 9 **shows how that escalated from 12 May.**
 10 Q. 363, please. Just finding the... ah, yes.
 11 At 3507 you say, "I will have to get"...
 12 Sorry, I will let you get there. "I will have to
 13 get a lawyer and all, Joey. My biggest call
 14 here is what I'm telling you. My biggest call
 15 is: do I create a constitutional crisis?
 16 Because the Chief Minister is suspected of a
 17 crime, okay?" Now, we have heard evidence
 18 from Superintendent Wyan that the Chief
 19 Minister was never a suspect in Operation
 20 Delhi. What is your understanding of the
 21 Chief Minister's status in the Operation Delhi
 22 investigation?
 23 **A. I accept that that comment was probably**
 24 **extreme, in - but, I was emotionally charged,**
 25 **and I would ask that you cons-- take that into**

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1 **account. My understanding of the Chief**
 2 **Minister's involvement in the matter was that**
 3 **during the forming of 36 North the Chief**
 4 **Minister had afforded (?) the - Mr Perez and**
 5 **Mr Cornelio, and evidently Mr Levy, total**
 6 **support in - for the creation of 36 North.**
 7 **And, if you understand that 36 North was**
 8 **mainly created with the - with the first**
 9 **landing of the contract of the NSCIS**
 10 **platform, that it was a - a consideration that I**
 11 **had. So, Mr Picardo was supporting the**
 12 **venture that was going to assume the contract**
 13 **of the - the NSI - NSCIS platform. And -**
 14 **sorry...**
 15 Q. Sorry, sorry.
 16 **A. Sometimes taking it so slowly doesn't**
 17 **help, either. And, I had been - it had been**
 18 **brought to my notice that Mr Perez was**
 19 **communicating with Mr Picardo his exit**
 20 **strategy from Blands, with Mr Picardo**
 21 **wishing him luck. Was feeding Mr Picardo**
 22 **the contents of the meeting that - that he was**
 23 **having with Mr Gaggero, to the extent where**
 24 **Mr Perez told Mr Gaggero - rather, Mr Perez**
 25 **told Mr Picardo that Mr Gaggero was**

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1 **seeking compensation, if he had to release**
 2 **his sort of control of the NS - of the platform.**
 3 **And, Mr Picardo said: certainly, we'll - I can**
 4 **help you with that. So, there was implicit**
 5 **agreement that the 36 North was going to**
 6 **assume the management, or the service**
 7 **provision, of the - of the - of the platform.**
 8 **So that, at the time, and in the context of**
 9 **thinking that there is - or susp-- suspecting**
 10 **that there is a conspiracy to defraud Blands,**
 11 **the Chief Minister had questions to answer**
 12 **to.**
 13 Q. You said that it was an "extreme"
 14 statement. Is it your position today that he
 15 was a suspect in Operation Delhi?
 16 **A. I can't - I can't say that he was, no.**
 17 THE CHAIRMAN: Well, you must know
 18 that he was not a suspect?
 19 **A. He had questions to answer, sir.**
 20 Q. Is it your position that he was a suspect,
 21 or that he was not a suspect?
 22 **A. I wouldn't classify him as a suspect, but**
 23 **he had questions to answer.**
 24 Q. At the end of the meeting, at 367, the
 25 Chair about seven boxes from the bottom

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<p>1 says, "No, no. What was mentioned in the 2 way you handled the case, that you had lied - 3 you lied, basically, to the Chief Minister." 4 "On what?", you say. "Or omitted the truth, 5 that". And you say, "On what? Wait, wait, 6 wait, on what?" The GPA Chair said, "I'll 7 find out. Or that you kept the truth from 8 them, or that you sort of - why would they 9 lose faith - or, 'faith' it's not the word - 10 confidence in you?" "I lied in what, in what? 11 In the collision, or in that particular case?" 12 "In everything, in - in everything." Did you 13 know what lie was being referred to? 14 A. No. 15 Q. You say that you put it all down to 16 Operation Delhi. Did you not have an idea 17 that this might relate to the exchange about 18 the DPP? 19 A. I had squared that off with the DPP. He 20 said that he was going to put it down to a 21 misunderstanding. I had not had further 22 contact with the Chief Minister. But 23 certainly, unbeknown to me, the - the 24 machinery was working behind the scenes. 25 Q. Sorry to interrupt you, but you say, "I had</p> <p style="text-align: center;">Page 41</p>	<p>1 A. No. 2 Q. -- elaborate? 3 A. No, he didn't. 4 Q. Thank you. 5 A. Which is what struck me, that the letters 6 did not contain a reference to Delhi at all. 7 And, that is one of the reasons why - that the 8 - that had been discussed at the meeting. 9 Q. Can we now turn to the 29 May letter. 10 This is the letter sent by your lawyers, 11 Charles Gomez & Co, to the GPA. It is at 12 C4477. The third paragraph says... sorry, I 13 am just finding my reference, "this could 14 potentially be remedied". Sorry, it is on the 15 third page, C4479. The third paragraph there 16 says, "The approach the Chair has been, for 17 the reasons explained below, clearly 18 unlawful. This could potentially be remedied 19 by taking a fully independent decision now 20 and concluding that Mr McGrail should not 21 be removed from office." At this point in 22 time, do we understand from that that your 23 preference was to remain in your post rather 24 than retire? 25 A. It was, but I had a lot going through my</p> <p style="text-align: center;">Page 43</p>
<p>1 squared that off with the DPP." Do you mean 2 you squared it off with the AG? 3 A. Absolutely right, and I beg your - beg 4 your pardon. I squared that off with Mr 5 Llamas at the meeting on the 13th, when we 6 both remained behind and he said he was 7 going to put it down to a misunderstanding, 8 and that he was going to temper the Chief 9 Minister's - or explain, because at the end of 10 the day Mr Picardo never asked me for an 11 explanation, so Mr Llamas was the go- 12 between to explain what I meant at that 13 meeting of the 12th. So, I did not know that 14 that remained a sticking point, if you - if - if 15 that makes any sense? 16 Q. We see there that the GPA Chair says, "I'll 17 find out." Did he ever get back to you with 18 more information on the alleged lie? 19 A. He said that he was going to provide me 20 with his notes, that contained the reasons 21 why the confidence was supposed to have 22 been lost. 23 Q. We have seen the two letters that were 24 sent to you on that day. Other than those 25 letters, did he --</p> <p style="text-align: center;">Page 42</p>	<p>1 head. There was the vulnerability aspect, the 2 serious concern - fear, in a way, yes. But I - 3 but I wanted to see my career through. 4 Q. 4478, which is the previous page. The 5 last sentence says, "If you do not properly 6 consider these representations and do not 7 make an independent decision, you will be 8 acting unlawfully and your decision will be 9 vulnerable to a judicial review challenge. 10 The GPA did not withdraw its process for 11 another week, until 5 June. Why did you not 12 judicially review the process at that point? 13 A. The - I am not represented by any 14 federation, association or - or representative 15 body. For me to consider such a - an action 16 at a stage - that stage, where things are 17 moving so quickly, and incur considerable 18 personal cost, it just at that point they did not 19 feature. 20 (11.00) 21 We were hopeful that the authoritative bodies 22 saw sense in what was happening, that they 23 could understand that the actions that they'd 24 been asked to do were improper and it's not 25 going from zero to a hundred miles an hour</p> <p style="text-align: center;">Page 44</p>

11 (Pages 41 to 44)

<p>1 in terms of 100 miles an hour being the 2 judicial review. I would have expected a 3 more escalation, if matters warranted it. It's 4 like a lawyer having -- I mean, it's not for me 5 to answer, I'm the policeman here, I am not 6 the lawyers -- but lawyers tend to notify of 7 potential repercussions if you don't do this, 8 and if you don't do that. So, I take that that is 9 what was meant in my lawyer's letter. 10 Q. Can we turn to C4742 please. This is a 11 letter sent by TSN, lawyers for the GPA, to 12 your lawyers on 5 June 2020 where the 13 invitation to retire was withdrawn. How did 14 you feel when that invitation to retire was 15 withdrawn? 16 A. I was quite relieved, but there was a 17 sentence there that said that the complaints 18 raised by the Governor and the Chief 19 Minister still alive but they had to consider 20 how to proceed in respect of them. My 21 lawyers responded straightaway to that letter. 22 Q. Yes, that is at C4801. 23 A. And whilst I say that I was relieved to a 24 certain degree, the threat of Mr Pyle invoking 25 his section 13 powers still lingered, but I was</p> <p style="text-align: center;">Page 45</p>	<p>1 late evening, which all suggested that he was 2 going to invoke his powers. By that point 3 my wellbeing was seriously affected. 4 THE CHAIRMAN: Sorry, I did not catch 5 that. 6 A. My wellbeing was seriously affected. 7 MR SANTOS: Were considerations about 8 your pension relevant to this decision? 9 A. That came in, but primarily, like I told Mr 10 Britto, my interests revolved around 11 Gibraltar's reputation. Was I going to cause 12 a constitutional crisis at such a crucial time in 13 the diplomatic sense and political sense and 14 in fact I also make reference to that 15 somewhere else which now slips my mind, 16 but I think I have just remembered I also 17 make reference to that to Mr Llamas when he 18 calls me on 22 May and I tell him, "Look 19 where I am. Do I pull the blanket over or do 20 I leave quietly?" So I was contemplating 21 Gibraltar's interests. I had that in mind. I 22 had -- no doubt my wellbeing took over, 23 influenced by the fact that over three-and-a- 24 half decades of loyal service to the police and 25 to Gibraltar and to the Crown were in serious</p> <p style="text-align: center;">Page 47</p>
<p>1 also disappointed because my lawyers put the 2 question to the GPA, "Well, what are you 3 going to do about it? What process?", and 4 there was absolutely no response from the 5 GPA or from TSN and that disappointed me 6 somewhat. 7 Q. If I can take you to the final paragraph of 8 your lawyer's response, you say, "Our client 9 is gravely concerned by how he has been 10 treated during this process and I welcome 11 your frank acknowledgement that there have 12 been procedural flaws. He is an officer of 13 the highest standing with an impeccable 14 record over the past 36 years. In these 15 circumstances, given how unfairly he has 16 been treated and the improper pressure put 17 upon him to alter the course of a live criminal 18 investigation, our client feels he must apply 19 for early retirement from the Royal Gibraltar 20 Police." What had changed between 29 May, 21 when you were still intending to keep your 22 position and 5 June to make you feel that 23 you must apply for early retirement? 24 A. The pressure was relentless from Mr 25 Pyle. I was getting texts, messages, emails</p> <p style="text-align: center;">Page 46</p>	<p>1 jeopardy and the impact that that would have 2 in my life. 3 Q. I am not asking you to go into any actual 4 advice that you received, but had you taken 5 advice on the pension point? 6 A. No, but I knew from previous officers 7 that retirement was different to resignation 8 and I think actually Mr Picardo makes 9 reference to that in some email to Mr Pyle. 10 Q. The first line of this letter says that the 11 letter of 5 June from TSN was received at 12 4.28 and -- 13 A. Pm, yes? 14 Q. Sorry? 15 A. 4.28 pm? 16 Q. Pm, yes. It says, "We refer to your letter 17 of today's date received after close of 18 business at 4.28. This brief response has 19 been prepared at speed given the timing of 20 receipt of your letter." That was a 21 turnaround of less than an hour. Had you 22 already made your mind up on applying for 23 early retirement by this stage or was that a 24 decision that was taken between receiving 25 the letter from TSN and responding in your</p> <p style="text-align: center;">Page 48</p>

12 (Pages 45 to 48)

<p>1 email?</p> <p>2 A. The issue of the threat of Mr Pyle</p> <p>3 invoking section 13 and asking me to go as</p> <p>4 opposed to giving me an opportunity to argue</p> <p>5 the case, because it would have been very</p> <p>6 instructive and you can't -- if the Governor</p> <p>7 says, "13 is invoked", albeit it would have</p> <p>8 been illegal in my view, and in my lawyer's</p> <p>9 view, there is a lot here at stake. As I have</p> <p>10 explained, my wellbeing was seriously</p> <p>11 affected, even if it would have been a</p> <p>12 suspension. A suspension is as good as, in</p> <p>13 Gibraltar because of the way we are</p> <p>14 structured and the way we are as a</p> <p>15 community function, that would have been a</p> <p>16 serious long nail in my coffin.</p> <p>17 Q. Sorry, but my question was more focused</p> <p>18 on the timing of your decision. Was that a</p> <p>19 decision that you took in response to the TSN</p> <p>20 letter or because you reply within an hour or</p> <p>21 was it something that you had already</p> <p>22 decided by the time that that letter came in?</p> <p>23 A. This is nearly four years. I remember</p> <p>24 sitting with my lawyer and without meaning</p> <p>25 to do away with legally privileged advice that</p> <p style="text-align: center;">Page 49</p>	<p>1 have just been looking at to this meeting, so</p> <p>2 it must have been after 5.24 in the afternoon.</p> <p>3 Do you recall when that meeting took place,</p> <p>4 what time?</p> <p>5 A. It must be in the email trails because he</p> <p>6 communicated either by WhatsApp or by</p> <p>7 email. He would have requested me to go</p> <p>8 and off the top of my head I can't confirm the</p> <p>9 date, the time rather.</p> <p>10 Q. Do you have notes of the meeting?</p> <p>11 A. No.</p> <p>12 Q. Did you record the meeting?</p> <p>13 A. No.</p> <p>14 Q. Why did you not record that meeting</p> <p>15 unlike the other meetings that you had</p> <p>16 recorded?</p> <p>17 A. Because once I had told my lawyers that I</p> <p>18 had these other recordings and I told them, I</p> <p>19 was advised that, look, you don't --</p> <p>20 Q. We won't go into your advice, but it was</p> <p>21 on the basis of conversations with your</p> <p>22 lawyers?</p> <p>23 A. Yes.</p> <p>24 Q. You state that Mr Pyle asked you to</p> <p>25 return to see him on the following Monday</p> <p style="text-align: center;">Page 51</p>
<p>1 I received, the email was received and we</p> <p>2 consider what's going to happen now and I</p> <p>3 am thinking the world is crumbling. So, it's</p> <p>4 probably on that same day, that same</p> <p>5 moment that I say, "Look, I can't handle this.</p> <p>6 I can't handle this any further and it's best</p> <p>7 that I apply in the interests of everything, in</p> <p>8 my personal interests. Of course, that was</p> <p>9 featuring and in the interests of everything</p> <p>10 else.</p> <p>11 Q. You say that the threat had emerged, the</p> <p>12 section 13 threat had emerged, when did that</p> <p>13 threat emerge for you?</p> <p>14 A. The minute Mr Britto communicated to</p> <p>15 me that that was the option, the nuclear</p> <p>16 option, as he explained it. That was alive</p> <p>17 from the minute I got the first letter.</p> <p>18 Q. Of 22 May?</p> <p>19 A. Of the 22nd, yes.</p> <p>20 Q. If we can go to A40, please, in your</p> <p>21 witness statement. This is your first witness</p> <p>22 statement, page 40. At paragraph 96 you</p> <p>23 describe a meeting between you and Mr Pyle</p> <p>24 at The Convent on 5 June. You say that you</p> <p>25 took a copy of your email to the GPA that we</p> <p style="text-align: center;">Page 50</p>	<p>1 with a view of invoking his powers under</p> <p>2 section 13. Do you recall the exact language</p> <p>3 that Mr Pyle used during the meeting in</p> <p>4 relation to section 13?</p> <p>5 A. I recall the message, the substance of the</p> <p>6 message which was, "I'll take away the</p> <p>7 papers to look at them and Monday I will be</p> <p>8 considering the invoking of section 13."</p> <p>9 That's the tenor of the conversation. I can't</p> <p>10 recall the words. Mr Pyle is very softly</p> <p>11 spoken and he doesn't give you eye contact</p> <p>12 and so that is the tenor of the conversation,</p> <p>13 but I believe that it is supported that that was</p> <p>14 his intention. It is supported by emails in the</p> <p>15 sense that he says to his bosses in London</p> <p>16 that he would be very carefully putting it</p> <p>17 across that he either left or I pushed him out.</p> <p>18 Q. Mr Pyle, his account of that meeting is, "I</p> <p>19 said that whilst I had not made up my mind</p> <p>20 as to whether I would use the powers</p> <p>21 invested in me, I would be prepared to do</p> <p>22 so." Do you agree with that account?</p> <p>23 A. He gave me the impression that he was</p> <p>24 using, he was going to use and that is</p> <p>25 corroborated by emails that I had not seen</p> <p style="text-align: center;">Page 52</p>

<p>1 until obviously the Inquiry was convened.</p> <p>2 Q. Mr Pyle --</p> <p>3 A. I mean, there was already plans to have a</p> <p>4 replacement. There was already talk to</p> <p>5 replace me. So how can he say that he was</p> <p>6 going to consider? That's misleading in</p> <p>7 itself.</p> <p>8 Q. Can we just clarify one point, because Mr</p> <p>9 Pyle states in his evidence, and he gave you</p> <p>10 copies of the three letters, each of the three</p> <p>11 letters of the Attorney General, the Chief</p> <p>12 Minister and his letter to the GPA on 5 June.</p> <p>13 But on 7 June 2020, he sends you an email</p> <p>14 which suggests that he would giving you the</p> <p>15 three letters at 8 June meeting, so there's the</p> <p>16 Friday meeting, and then 8 June meeting.</p> <p>17 A. After I enquired what was the purpose of</p> <p>18 that meeting, because I was worried that that</p> <p>19 was a section 13 coming up, that he was</p> <p>20 going to invoke section 13, so I was</p> <p>21 enquiring, "Why do you want to see me?"</p> <p>22 Q. And he replied referring to the letters?</p> <p>23 A. It's the purpose of the meeting is to</p> <p>24 provide you with the letters. There may have</p> <p>25 been a follow up from me which says, "Why</p> <p style="text-align: center;">Page 53</p>	<p>1 about the -- we are going to turn to this -- but</p> <p>2 he emails you about the letter that you had</p> <p>3 handed ... the email that you had handed him</p> <p>4 during the meeting. We will come to that</p> <p>5 now. But then 104 you email him asking for</p> <p>6 your lawyer to attend the meeting, and he</p> <p>7 refuses stating that the purpose of the</p> <p>8 meeting was to hand you copies of the three</p> <p>9 letters.</p> <p>10 A. And when was that?</p> <p>11 Q. That was on the Sunday.</p> <p>12 A. So then the Monday was the meeting.</p> <p>13 That's when I got the letters.</p> <p>14 Q. Did you think that, notwithstanding the</p> <p>15 Chief Minister's and Mr Pyle's position or</p> <p>16 views on you, did you think that it was</p> <p>17 possible to continue in your role of</p> <p>18 Commissioner of Police?</p> <p>19 A. There was certainly room to sit down and</p> <p>20 talk about this, air any differences, which is</p> <p>21 provided for in the Act by the way and</p> <p>22 perhaps ... and if after that a face to face and</p> <p>23 an opportunity to clear up any ambiguities</p> <p>24 and misconceptions or disagreements, that</p> <p>25 that would certainly help the situation. But</p> <p style="text-align: center;">Page 55</p>
<p>1 don't you send them to me?", and he said,</p> <p>2 "No, I want to see you to hand over three</p> <p>3 letters." And that still worried me. I was</p> <p>4 worried because I was not being treated fairly</p> <p>5 and therefore I felt it was a pack of wolves</p> <p>6 hounding me and I had to sort of be careful</p> <p>7 which step I took and I wanted to try and</p> <p>8 mitigate that as much as possible.</p> <p>9 Q. My question is a more specific one, do</p> <p>10 you recall at which of the meetings you were</p> <p>11 given the letters? Was it the Friday meeting</p> <p>12 or was it --</p> <p>13 A. Does my statement cover it?</p> <p>14 Q. I think your position is that you were</p> <p>15 given the meeting on the Monday ... on the</p> <p>16 Tuesday. But if you don't have a clear</p> <p>17 recollection that's fine. I just wanted to know</p> <p>18 whether you had a clear recollection of it.</p> <p>19 It's probably not the most important point in</p> <p>20 this Inquiry, but I just wanted to ask you that.</p> <p>21 We don't have to --</p> <p>22 A. If I can refer to the statement that will</p> <p>23 trigger my recollection.</p> <p>24 Q. Paragraph 96 is your meeting of the</p> <p>25 Friday and then at 99 Mr Pyle emails you</p> <p style="text-align: center;">Page 54</p>	<p>1 you are asking me whether at that point I felt</p> <p>2 that my position was tenable as far as my</p> <p>3 situation was concerned. I had a storm in my</p> <p>4 head, sparks going all over the place in terms</p> <p>5 of what my fate was going to be and, like I</p> <p>6 say, I probably lost confidence. I knew that I</p> <p>7 could not believe how a Chief Minister and</p> <p>8 an Attorney General had reacted in a way, in</p> <p>9 such a way. So I was in a way a victim to</p> <p>10 their interference and how could I wriggle</p> <p>11 out of that if there was no support. I took the</p> <p>12 decision based not because of the loss of</p> <p>13 confidence, but because it was probably</p> <p>14 better for Gibraltar, better for the RGP and</p> <p>15 certainly better for me.</p> <p>16 Q. On the Sunday, we have seen that the</p> <p>17 email came from Mr Pyle where he referred</p> <p>18 to, where he asked you to "please confirm to</p> <p>19 him by no later than midday tomorrow</p> <p>20 whether that is indeed your decision and if so</p> <p>21 whether you will be tendering your letter of</p> <p>22 resignation on Monday", and you give</p> <p>23 evidence on receiving this letter in your first</p> <p>24 witness statement at 100, and you pick up on</p> <p>25 the point that he asks for a letter of</p> <p style="text-align: center;">Page 56</p>

1 resignation rather than a letter of retirement.
 2 **A. Yes.**
 3 Q. Which you say caused you indescribable
 4 stress because he was already exercising his
 5 powers under section 13. Your lawyers reply
 6 the next day which is at C4820. They say
 7 towards the bottom of the page, three from
 8 the bottom, "The Commissioner is facing
 9 apparent accusations of lying to the Chief
 10 Minister ..." Sorry, over the page, 4821, it is
 11 about half way down, "Because of the
 12 immense pressure which has been placed on
 13 our client and his family and the grave
 14 realisation that he can no longer count on the
 15 impartiality of the most senior members of
 16 Gibraltar's government, he had been left with
 17 no choice but to apply for early retirement.
 18 He will certainly not be resigning." It then
 19 says, "The process of such a request for
 20 retirement will inevitably involve a number
 21 of essential prerequisites such as the financial
 22 terms of the early retirement and the vague
 23 allegations of impropriety." What was your
 24 plan if satisfactory terms were not agreed?
 25 Would you have withdrawn your application

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1 for early retirement?
 2 **A. My requirements were not agreed.**
 3 **Indeed, they were not agreed and I did**
 4 **proceed to retire.**
 5 Q. Going back up to 4820, there is that
 6 paragraph that read about the accusations of
 7 lying to the CM and AG without having been
 8 given any detail. Is it your position that,
 9 even on 7 June you did not know what
 10 alleged lie was being referred to?
 11 **A. I believe I had in my possession the**
 12 **letters which were constructed as a result of**
 13 **the GPA sharing my representations with the**
 14 **parties involved. Again, I question that, but**
 15 **that is for the Inquiry to determine, and their**
 16 **responses are constructed around what my**
 17 **representations were, as opposed to an**
 18 **untainted version of events which I had**
 19 **requested before my representations were put**
 20 **in. I did not have the particularised account**
 21 **of the Chief Minister, of the Attorney**
 22 **General or of the Governor before my**
 23 **lawyers made the representations on my**
 24 **behalf. I think that is significant.**
 25 Q. Can we now move to the airport incident

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1 please. At B2121 we have the report that
 2 you prepared about the airport incident. Why
 3 did the Commissioner of Police Yome ask
 4 you to prepare this report? I am not asking
 5 what the basis for the report was, but why
 6 was it you who was chosen to prepare the
 7 report by Commissioner Yome?
 8 **A. Because I had led on the ground in terms**
 9 **of the policing response to that incident.**
 10 Q. In your fifth witness statement at
 11 paragraph 45, it is at A155, but I can just
 12 paraphrase, you say that Commodore
 13 Walliker did not tell you that the three senior
 14 military officials would be willing to
 15 volunteer to interview. Did you consider that
 16 as a potential option as an alternative to
 17 arresting them where they were arrested?
 18 **A. I did not have any contact with Mr**
 19 **Walliker by email --**
 20 Q. No, my question is whether you
 21 considered the option of asking the
 22 individuals to attend the station rather than
 23 arresting them at work or at the airport.
 24 **A. I don't think I considered that. I can't**
 25 **recall what the considerations were around**

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1 **that. What I do recall is that due process had**
 2 **to follow to make them account for their**
 3 **actions and their offences for which they**
 4 **were being investigated, which I believe**
 5 **there was an attempting to pervert the course**
 6 **of justice and obstructing police.**
 7 Q. In your report dated 4 November 2019,
 8 you describe the criminal investigation
 9 known as Operation Hachi, and a plan that
 10 was devised for what you call a "strike" by
 11 three teams head by a senior officer each
 12 acting simultaneously and arresting the three
 13 individuals and executing the search
 14 warrants. Do you think that was a
 15 proportionate way to act in the circumstances
 16 and one that was likely to preserve the
 17 important relationship between the RGP and
 18 the MoD?
 19 **A. That is a standard approach, a**
 20 **simultaneous strike is a standard approach**
 21 **where you fear that the persons that you are**
 22 **dealing with may confer, dispose of evidence**
 23 **or abscond. You just ensure that everybody's**
 24 **--**
 25 THE CHAIRMAN: But these weren't

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<p>1 gangsters; these are senior officers in the 2 Armed Services. 3 A. I appreciate that, but their behaviour 4 leading up to this certainly was not 5 conducive of the high ranks that they 6 represented. They had been devious to my 7 understanding, they had been devious and in 8 fact they are. They have apologised for their 9 behaviour. 10 THE CHAIRMAN: But you haven't, have 11 you? 12 A. I beg your pardon, sir. 13 THE CHAIRMAN: You haven't apologised 14 for your behaviour? 15 A. I don't think I needed to. 16 THE CHAIRMAN: No, precisely. 17 MR SANTOS: We have already gone 18 through the communications that you refer to 19 in terms of the Chief Minister's comments at 20 the time about the incident initially and about 21 the arrests. You also describe in your 22 evidence a meeting with the Chief Minister 23 after the incident and a meeting at the airport 24 as well. Is your evidence that the Chief 25 Minister was entirely supportive of the RGP's</p> <p style="text-align: center;">Page 61</p>	<p>1 Q. Would you accept that the GPA was 2 aware about the difficult relationship 3 between you and the GPF conveners? 4 A. I wouldn't have known that because my 5 last contact with the GPA on this matter, 6 expressing my concerns in the trajectory that 7 the GPF were taking. The GPA and Mr 8 Britto in particular offered advice which I 9 welcomed and took on board, but other than 10 that, I had no further contact with him in this 11 regard. 12 Q. Can I ask you to turn to C1627 please. 13 This is an email by you to Mr Britto on 21 14 December 2018 and you say, "Dear Joey, I 15 want to bring you up to speed on what, in my 16 view, is the incessant path of destruction that 17 the Gibraltar Police Federation, Henry 18 Bautista et al is set on. You can read their 19 latest diatribe in the attached emails." Then 20 if I can take you to B5878, please, these are 21 the minutes of a meeting on 6 February 2020 22 of the Gibraltar Police Authority, and then on 23 the final page, there is an entry that says, 24 "Meeting with GPF and CoP. The Chairman 25 gave an overview of the situation between</p> <p style="text-align: center;">Page 63</p>
<p>1 actions throughout? 2 A. Not only was he supportive, but he was 3 encouraging and egging the RGP to take 4 action. 5 Q. Can we now turn please to the Federation 6 complaints. You and everybody else 7 involved seems to accept that you had a very 8 difficult relationship with the GPF 9 conveners. Do you think that there is an 10 obligation on the part of a Commissioner of 11 Police to maintain a working relationship 12 with the Gibraltar Police Federation? 13 A. I agree with that, yes. It's favourable for 14 everybody. 15 Q. Did Dr Britto or any other members of 16 the GPA ever inform you about complaints 17 made to them by the GPF? 18 A. No. I never had any notification or 19 inclination other than the differences that we 20 had which I think have been aired out. But in 21 terms of complaints about me, nothing of the 22 sort was brought to my notice. Well, it 23 wasn't brought to my notice. It transpired 24 because they never were. Probably that's the 25 reason why it was not brought to my notice.</p> <p style="text-align: center;">Page 62</p>	<p>1 the GPF and the RGP. He mentioned that he 2 had asked the GPF for a policy based on the 3 Dignity at Work however the GPA would 4 have to be the appellant body. The Chairman 5 suggested that the Authority should advise 6 the CoP to seek guidance on how Federations 7 in the UK function. He also suggested 8 advising the CoP to take a step back on the 9 proposed disciplinary action against the GPF. 10 However, the Authority will listen to his 11 views on the matter at the meeting at 10.30 12 am." Then at the end says, "The CoP joined 13 the meeting and explained the situation 14 between the GPF and the RGP. The meeting 15 ended with the CoP agreeing to go down the 16 route of mediation and review." Would you 17 agree that those two documents are examples 18 of the difficult relationship between you and 19 the Police Federation being raised with the 20 GPA? 21 A. I do agree, yes, but it's not in relation to 22 any specific complaint as far as I am aware. 23 Q. No, that's not my question. Then very 24 briefly, the helicopter incident. You will be 25 aware that one of the reasons that Mr Pyle</p> <p style="text-align: center;">Page 64</p>

16 (Pages 61 to 64)

<p>1 cites as giving rise to his loss of confidence 2 in you is the assault on the helicopter pilot in 3 Gibraltar and the subsequent investigation. 4 That was an investigation led by Detective 5 Inspector Roy Perez and at the time you were 6 Superintendent in Charge of Crime. Were 7 you satisfied with Detective Inspector Perez's 8 investigation into the incident? 9 A. As Superintendent I wouldn't have dipped 10 into the detail unless there was a need for me. 11 And in this case my involvement was simply 12 to provide updates to the Provost Marshall at 13 their request, so that's the reason why I 14 approached the investigators to seek updates 15 on the progress. So, having seen the work 16 that the officers carried out and the lengths 17 that the RGP went to in terms of sending 18 exhibits off for forensic examination to the 19 UK, arresting four or five individuals, 20 questioning them, trawling through hours on 21 end of CCTV footage, I think it was an 22 investigation well conducted. 23 Q. Was it typical for forensic evidence to 24 take several weeks to consider? 25 A. The way I understand it, there's a gradual</p> <p style="text-align: center;">Page 65</p>	<p>1 matter with me. 2 Q. I am just going to ask you two questions 3 about Alcaidesa, but it has just occurred to 4 me that I missed out a question in relation to 5 the airport incident. I will just go back to 6 that briefly. Did you have any direct 7 dealings with Mr Pyle in relation to the 8 airport incident? 9 A. No, but I had a view. I never had -- the 10 answer is no, but -- 11 Q. We know your view from your evidence, 12 Mr McGrail. 13 A. Okay. 14 Q. Which is that his inertia didn't assist the 15 situation. 16 A. Basically, as Governor, if you call the 17 Acting Commander of British Forces, he 18 responds to that call and turns up. And then 19 as Governor you tell him, "Look, this cannot 20 carry on as it is", as supposed to ... and that 21 would have prevented all this stand-off. So 22 his lack of assertion as interim Governor in 23 ordering Colonel Frank Green to come in, 24 would have potentially smothered all the ... 25 take the wind out of what ... the momentum</p> <p style="text-align: center;">Page 67</p>
<p>1 stepped process in terms of forensics, 2 particularly when it comes to blood and 3 DNA. I may be wrong in my recollection. 4 It's already four or five years that I haven't 5 had any contact with this, but it goes through 6 stages. They carry out one examination. 7 Depending on the results, they consult with 8 the client, "Look, this is worth going 9 further." They go to another stage because 10 the results may not be fully determined from 11 the word go. So there's a couple of stages, 12 and that could take weeks if not months. 13 Considering the -- I don't know whether there 14 was any delays arising from the pandemic or 15 whether there was any other workloads -- 16 Q. This was pre-epidemic, but -- 17 A. But there could have been other 18 workloads in the facility that was carrying 19 out the examinations and so forth. 20 Q. Did the GPA ever raise this matter with 21 you? 22 A. No. 23 Q. Did Mr Pyle ever raise this matter with 24 you? 25 A. Mr Pyle has not raised this or any other</p> <p style="text-align: center;">Page 66</p>	<p>1 was gathering. That's what I mean by ... 2 Q. Yes, thank you. Now just finally the 3 Alcaidesa claims. Can I ask you to explain 4 briefly the nature of your involvement, if 5 any, in the RGP's operation in Alcaidesa in 6 August 2010. 7 A. In 2010 I was a Chief Inspector and 8 posted in the Professional Standards 9 Department of the RGP. My line manager, 10 my direct line manager was then 11 Superintendent J Gomez and he roped me in, 12 Mr Gomez was the director, to carry out an 13 investigation into the activities or the 14 complaints or the concerns and I was part of 15 that investigation team. 16 Q. My question was focused on the 17 operation. Did you have any involvement in 18 the operation itself? 19 A. None whatsoever. 20 Q. Are you aware of any claims that arose 21 out of that incident? 22 A. No. 23 MR SANTOS: Thank you, Mr McGrail. I 24 have no further questions. Sir, perhaps that 25 is the time, an opportune moment for a break.</p> <p style="text-align: center;">Page 68</p>

<p>1 THE CHAIRMAN: Yes, and I think Mr 2 Cruz wants to ask some questions, which you 3 can discuss with him over the short break. 4 MR SANTOS: Thank you, sir. 5 THE CHAIRMAN: Thank you very much. 6 (11.35) 7 (Adjourned for a short time) 8 (11.45.00) 9 THE CHAIRMAN: I think everyone is 10 agreed that you should go first, Mr Gibbs, is 11 that right? 12 MR GIBBS: I see Mr Cruz standing and I 13 would be very happy for him to go first. 14 THE CHAIRMAN: All right. Five to ten 15 minutes. 16 MR CRUZ: I hope to be five minutes, if 17 that. 18 THE CHAIRMAN: Okay. 19 Cross-examination by MR CRUZ 20 MR CRUZ: Mr McGrail, when you were 21 answering questions and also with reference 22 to paragraph 33 of your first witness 23 statement, you said at the meeting of 12 May 24 Mr Picardo suggested that the RGP were 25 inept at investigating white collar crime - he</p> <p style="text-align: center;">Page 69</p>	<p>1 A. I do. 2 Q. Okay. Now, in terms of the question of 3 white collar crime and specifically this 4 investigation, do you know if any of the 5 officers, that is Mr Richardson or Mr Wyan, 6 was in any way scolded or in any way 7 criticised as a result of this investigation, 8 after you left, to your knowledge? 9 A. I have not spoken with Mr Wyan -- 10 Q. It is to your knowledge. If you do not ... 11 A. To my knowledge, no. 12 Q. Promoted actually, but there you are. In 13 so far as one of the documents that you have 14 seen, if I could ask you to look at it, B3452, 15 it is the NDM document, can I ask you to 16 look at paragraph 35. What did you 17 understand by political sensitivities. You 18 have seen this document, am I right? 19 A. Yes, I have. 20 Q. Yes. What did you understand as 21 political sensitivities? 22 A. The very apparent link between Hassans, 23 the Chief Minister and other members of 24 government, and that's what I refer to. 25 Q. In that paragraph 35 would you accept it</p> <p style="text-align: center;">Page 71</p>
<p>1 said that without having evidential 2 knowledge of this one clearly. Had there 3 been prior to 12 May occasions where Mr 4 Picardo had described the RGP in relation to 5 white collar crime as inept? 6 A. No. 7 Q. In any of the, I suppose, hundreds of 8 thousands of documents that you have seen, 9 are you aware of the document where the 10 accusation of the RGP being inept by the 11 Chief Minister in relation to Operation Delhi 12 has been identified? 13 A. No. 14 Q. Okay. In terms of the complaints in 15 relation to that, are you aware of any 16 complaints by Mr Pyle or the GPA in which 17 the RGP's investigation of this type of crime 18 has been described as inept, before 12 ...? 19 A. It has never been. 20 Q. No. In fact we have heard that Operation 21 Delhi has been described previously as 22 thorough, professional, forensically astute, 23 self-evidently thorough and professional. 24 Would you agree with that assessment of the 25 investigation itself?</p> <p style="text-align: center;">Page 70</p>	<p>1 is clear that there would be search warrant 2 issued on Hassan Law? Would it be obvious 3 from that paragraph? 4 A. Yes, and in fact it was me who suggested 5 to Mr Richardson that he should go to the 6 high authority to -- 7 Q. We will get to that in a moment. 8 A. Okay. 9 Q. At paragraph 31 can there be any doubt 10 about the objective of this document, of the 11 operation? 12 A. No doubt whatsoever. 13 Q. No doubt whatsoever. So if I can also 14 ask you to look at paragraph 39 on this 15 document you will see the words - it says: 16 "It is expected that any allegation of 17 impropriety or illegality will be vigorously 18 attacked using Hassans' considerable legal 19 resources." 20 Would it be fair to say that an attack from 21 Hassans on any process was envisaged? 22 A. It was, but not to the extremes that -- 23 Q. I understand that. Can I just ask you to 24 go to document 3610. This, if I can 25 summarise it, given I am past my five</p> <p style="text-align: center;">Page 72</p>

<p>1 minutes, this is an email to Mr Rocca from 2 Mr Richardson, copied to Mr Wyan, 3 enclosing the NDM - you will see that at 4 paragraph 3 - and also the charging advice. 5 At paragraph 339 of the charging advice, that 6 is B3666, would you agree that it is clear 7 what action was going to be taken from that 8 last paragraph? 9 A. (Pause) Yes. 10 Q. Now on Friday we hear Mr Wyan 11 describe the meeting of 15 May as - I will 12 use some of the language, that was in the 13 transcript, page 195-197 - you do not have to 14 go there, unless anybody wants to check: not 15 what was expected, a conversation about a 16 problem, how do we solve the problem, the 17 problem being Mr Levy and intention to 18 interview him under caution. He described it 19 as almost facilitation, perhaps a negotiation. 20 Would you say that is a fair description? 21 A. Obviously Mr Wyan was not privy to the 22 knowledge that I had and the experience that 23 I had had, so I can't comment with certainty 24 as to what he was thinking or what he took 25 away from that. All I can say is what I took</p> <p style="text-align: center;">Page 73</p>	<p>1 MR CRUZ: So sort of they sent the infantry 2 but forgot the air cover, if I can put it in 3 military terms. 4 A. I'm not a military man, so ... 5 MR CRUZ: Nor am I. Thank you. 6 Cross-examination by MR GIBBS 7 MR GIBBS: Thank you. I have just got one 8 area, please. I want your help with one part 9 of one of the recorded meetings between the 10 police and the law officers. It is the second 11 of those, it is 15 May, and Mr Santos took 12 you to two parts of that transcript one after 13 the other, and I just wonder whether we need 14 to look at some of the bits in between. The 15 first part was B271. If you look at the tape 16 time on the left hand side, it is at 8.17, Mr 17 Llamas saying: 18 "Christian and I are with you entirely on that. 19 What we think would be helpful for the 20 management of the whole thing is if that 21 interview would still go ahead but not have it 22 under caution." 23 Then he took you on, at page 273 and the last 24 entry, I think, on that page, tape time 16.15, 25 to Mr Richardson saying:</p> <p style="text-align: center;">Page 75</p>
<p>1 away from that, which squares off somehow 2 or another. 3 Q. Yes, so at a minimum - let me put it at its 4 minimum. Would you describe that as a 5 negotiation or facilitation? 6 A. At the very, very minimum. 7 Q. Yes, very minimum. So I asked Mr 8 Wyan on Friday whether - I think you 9 answered that a little bit earlier on this 10 morning - whether or not ultimately, given 11 what was envisaged, which I have taken you 12 to, the resources and support from the DPP, 13 the legal resources to face the inevitable 14 consequences of a Hassan attack, whether 15 they were adequate. Mr Wyan responded 16 that they were not adequate. Would you 17 agree with that statement? 18 A. I would describe it as lack of appetite, 19 yes. 20 THE CHAIRMAN: You would describe it 21 as ...? 22 A. Lack of appetite. 23 THE CHAIRMAN: A what? 24 A. Appetite. 25 THE CHAIRMAN: Lack of appetite.</p> <p style="text-align: center;">Page 74</p>	<p>1 "Sorry, sir, to interrupt you. I have had a 2 thought. If that's the case, get him to submit 3 his version of events, don't come in for 4 interview under caution, we're not going to 5 ask for it." 6 My learned friend Mr Santos suggested that 7 was Mr Richardson coming up with the 8 alternative proposal of a statement. I just do 9 not want there to be any confusion about 10 what was being posed and why, so could we 11 see what happened between those two times. 12 So if we return to B271, please. Are you all 13 right following that on screen? 14 A. I am, yes, I am. 15 Q. 8.17, Mr Llamas: 16 "Correct. Christian and I are with you 17 entirely on that. What we think would be 18 helpful for the management of the whole 19 thing is if that interview would still go ahead 20 but not have it under caution." 21 Mr Rocca says: 22 "Is that possible? Can you interview him and 23 then convert it under caution, depending on 24 what he says? I know it's not going to be 25 admissible whatever he tells you."</p> <p style="text-align: center;">Page 76</p>

<p>1 Mr Richardson says: 2 "I wouldn't be complying with the Codes of 3 Practice if I did that." 4 Mr Rocca: 5 "We've done it before." 6 Mr Richardson: 7 "I've already cautioned him, cautioned him 8 on body worn camera. I filed documents in 9 court saying that we had reasonable cause to 10 suspect." 11 Do you remember all that? 12 A. Evidently it's there. 13 Q. Then on that same page - you have all got 14 the documents and can read the parts I am 15 skipping over, but I am going to the last 16 speech on that page, which is Mr Rocca 17 again, and he says this: 18 "And the point that the Attorney General is 19 going to make now, I think, we believe, we 20 are led to believe that if we go under caution 21 he is not going to say a word, to the extent 22 that he may not even attend." 23 Can I just pause there. Whom did you 24 understand they were led to believe that by? 25 A. It was, although it's not explicit, but I</p> <p style="text-align: center;">Page 77</p>	<p>1 whom did the suggestion come first that Mr 2 Levy be treated by way of a statement? 3 A. From the law officers. 4 THE CHAIRMAN: Sorry, what did you 5 say? 6 A. The law officers. 7 MR GIBBS: From the law officers. 8 THE CHAIRMAN: From the law officers. 9 MR GIBBS: By which you mean, to spell it 10 out to those who do not know it, the Director 11 of Public Prosecutions and the Attorney 12 General of Gibraltar. 13 A. That is correct. 14 Q. Can we go on to page 273, please, and 15 the top of that page, tape time 13.27. Mr 16 Rocca is speaking again and he says: 17 "We've discussed this already. We would 18 only run on the basis that they give an 19 undertaking that it is done in an order to be 20 cooperative and would not be used to 21 undermine anything that Paul or anybody did 22 in taking the warrant, therefore your suspect 23 of the warrant would not be challenged 24 because you have agreed in a cooperative 25 manner to get the information you want. We</p> <p style="text-align: center;">Page 79</p>
<p>1 take it that they were referring to Hassans. 2 Q. Right. 3 "We are led to believe that if we go under 4 caution he is not going to say a word, to the 5 extent that he may not even attend. But at 6 the very least if you do arrest him he's not 7 going to give you anything. Then we are 8 discussing whether that's good or bad. I 9 think it leaves us with a problem evidentially, 10 and I think it leaves us with - in a position 11 where, whereby I've had my reservations, 12 you know, about whether we have enough on 13 Haime at the moment. I don't think we were 14 quite across the line with Haime and we 15 wouldn't proceed, so I would rather get 16 information from him that may either 17 incriminate him - if it does, fantastic." 18 Mr Richardson: 19 "How would we use it?" 20 Mr Rocca: 21 "No, no, we take a voluntary statement, not 22 under caution, as a witness. If he says things 23 that make it, in your view, that incriminate 24 him, you caution him. That's possible, no?" 25 So as you understood it in the room, from</p> <p style="text-align: center;">Page 78</p>	<p>1 would require that guarantee from his 2 lawyers and we discussed that." 3 With whom did you understand they had 4 discussed that? 5 A. As I've said, I believe that the DPP was 6 projecting the AG's voice in terms of 7 criminal matters that were being discussed, 8 because of his lack of experience. But 9 underpinning that was the notion of Mr 10 Llamas speaking to Hassans. 11 Q. Mr Richardson's response to that is: 12 "I have no doubt whatsoever that if we put 13 our actions before a court that they will be 14 upheld, that they would see merit in it. I 15 don't think we have anything to lose, other 16 than the wider issues here. The person that 17 has something to lose by this is him, not us. 18 And for me it would seem to be a travesty 19 that you can put up this barrage of emails that 20 have come today to the Magistrates' Court, to 21 the Clerk, to me, to the Attorney General, to 22 the Commissioner, alleging bad conduct, 23 alleging a malicious prosecution, alleging 24 gross breaches of law, to then say: 'All right, 25 we're agreeing not to treat you as a suspect.</p> <p style="text-align: center;">Page 80</p>

20 (Pages 77 to 80)

<p>1 Tell us what you want and we can't use it 2 against you, on the undertaking that all the 3 other stuff that you have said,' that I don't 4 think holds any water to it anyway, 'we're 5 going to ignore.' I don't think that's going to 6 serve the interest of this because we 7 articulated very clearly what Haime had to 8 account for, all the messages that's there, and 9 in the absence of that we would have to rely 10 on the normal conclusion that someone 11 would draw. He's interfered with civil 12 servants, he's used his influence. There 13 might be an explanation for this. In the 14 absence of this, what do we do? We say: 'We 15 prefer getting your explanation because it's 16 better than nothing,' but we've got half of the 17 conversation already." 18 Mr Rocca says: 19 "We wouldn't get a conviction any time 20 based on what we've got now. If Haime 21 gives us a 'no comment' and I'm assuming 22 ..." 23 What was the tenor of this to and fro between 24 Mr Richardson and the law officers? 25 A. The concern - the tenor is the expression</p> <p style="text-align: center;">Page 81</p>	<p>1 ask for it, give us your version of events." 2 Mr Rocca: 3 "In writing?" 4 Mr Richardson: 5 "Yes." 6 Then could I take you on, before I ask you a 7 question about it, to the bottom of that page 8 18; Mr Llamas says: 9 "But wait, Paul. If Haime on Sunday," 10 pausing there, was the interview set for 11 Monday? 12 A. I believe so, yes, sir. 13 Q. "But wait, Paul. If Haime on Sunday, 14 let's say, okay, he sends you a written 15 statement addressing the nine or ten grounds 16 you have got set out there," 17 pausing there, were there nine or ten grounds 18 set out in the invitation to come in for 19 interview? You have to say yes if you agree. 20 A. Sorry, yes, sorry, I beg your pardon. 21 Q. Yes. 22 "... addressing the nine or ten grounds you 23 have got set out there, the first question is: 24 would he be producing that statement under 25 caution?"</p> <p style="text-align: center;">Page 83</p>
<p>1 of concern that if there was a deviation in 2 practice and procedure, that would have an 3 impact later on potentially. 4 Q. I was going to go down next to your 5 intervention, just before 15.52. It says CoP, 6 that is you, says: 7 "Right, and then on the basis of what we 8 already have right now a charge would not 9 stick," 10 and Mr Richardson says: 11 "With the greatest respect, I am not sure I'd 12 support that view because some of that 13 evidence is so damning and ..." 14 and you said: 15 "But I'm saying looking at it from our 16 activity, imagine that the dilemma of doing it 17 under caution doesn't come into place, that 18 we go as we are meaning to go and he 19 provided a 'no comment'," 20 and that is the moment, is it not, at which Mr 21 Richardson interjects: 22 "Sorry, sir, to interrupt you. I have had a 23 thought. If that's the case, get him to submit 24 his version of events, don't come in for 25 interview under caution, we're not going to</p> <p style="text-align: center;">Page 82</p>	<p>1 Mr Richardson: 2 "Yes." 3 I am now on 275 and I am going, finally, to 4 the bottom of that page, below 19.45, do you 5 see you saying: 6 "That is one option," 7 and Mr Llamas says: 8 "Wait, so one option is a written statement 9 volunteered, in inverted commas, by JL 10 before Monday or by Monday. Then what do 11 you do?" 12 Mr Richardson: 13 "We would have to see what the context of 14 that was, see how it matches with the 15 evidence that we know, and then decide 16 whether we would need to put that to him in 17 an interview. If he gives an explanation, and 18 I have to be honest, which is very unlikely, 19 that would support a lot of the allegations 20 that we need to explore, there might not be a 21 need to speak to him, but it is very unlikely. 22 The only way around that, and I don't think 23 we would be prepared to do that, is to 24 disclose what it is that we want to ask in 25 advance and to get him to answer all those</p> <p style="text-align: center;">Page 84</p>

1 questions in writing, but that really would be
 2 a travesty."
 3 But is that what happened?
 4 **A. Eventually we succumbed to that, yes.**
 5 MR GIBBS: Thank you.
 6 THE CHAIRMAN: Yes, Sir Peter.
 7 Cross-examination by SIR PETER
 8 CARUANA
 9 SIR PETER CARUANA: Good afternoon,
 10 Mr McGrail.
 11 **A. Good afternoon.**
 12 Q. Mr McGrail, Mr Santos dealt with you in
 13 some detail with the question of a covert
 14 recording and I am certainly not going to
 15 cover the same ground again. But I would
 16 like to put some additional questions to you
 17 on that, if I may. Do I correctly understand
 18 your evidence to be that in the circumstances
 19 that you faced, you think it is entirely ethical
 20 and lived up to the standards of integrity and
 21 high professional standards of policing and
 22 the ethics in public life that my learned friend
 23 Mr Cruz spoke about - you heard him - in his
 24 oral opening. Do you think that? Is that your
 25 position, that you believe that in the

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1 circumstances that you faced that you did not
 2 fall foul of any of these principles?
 3 **A. In the dire straits that I was in, I did not**
 4 **feel that I was falling foul of those things.**
 5 Q. Okay.
 6 **A. Bearing in mind the mindset that I**
 7 **developed of the lack of impartiality**
 8 **displayed, and so that compounded my belief**
 9 **that it was not foul.**
 10 Q. Yesterday I think you candidly said that
 11 you were not proud of it, or a hundred per
 12 cent proud - I do not want to put words in
 13 your mouth. With the benefit of hindsight,
 14 do you continue to believe that what you did
 15 was entirely professionally and ethically
 16 correct and justified?
 17 **A. The benefit of hindsight is a very good**
 18 **thing to have, but I would have to think and I**
 19 **cannot unwind myself from the situation I**
 20 **faced on 12th, which probably would have**
 21 **developed further, as the evidence suggests.**
 22 **Mr Picardo's behaviour in this around that**
 23 **time on 14th with Mr Baglietto and so forth,**
 24 **just compounds my suspicions: what was this**
 25 **man doing speaking to the suspect and to the**

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1 **suspect's lawyer? So you asked me with**
 2 **hindsight how - I am in this position of**
 3 **authority, in high office, in hindsight would I**
 4 **have done it differently? I cannot say with**
 5 **certainty but I would have probably done it**
 6 **with the same uncomfortable sense that I did.**
 7 Q. Ethics is about comfort really. If
 8 something does not feel right it is unlikely to
 9 be ethical; if it feels right it is probably
 10 ethical. Ethics is not about a rule book, it is
 11 not about the law. Do you agree?
 12 **A. Not necessarily in that sense.**
 13 Q. Okay. Do you think that it is professional
 14 and ethical for the Commissioner of Police to
 15 secretly record his own senior officers in
 16 meetings?
 17 **A. (Pause) For the reasons that I've**
 18 **explained as to why I did so, it was**
 19 **irrespective of whether they were senior**
 20 **officers or whoever was there.**
 21 Q. Under the Act are you technically the
 22 employer of policemen? Are you aware the
 23 provisions of section 33 you appoint
 24 policemen, the police officers of all ranks.
 25 **A. Yes, but I don't see it as the employer as**

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1 **such. I think the Crown employs us all. I am**
 2 **a constable much in the same way as a police**
 3 **constable, so we come under the Crown.**
 4 **Crown servants --**
 5 Q. Yes, but - okay, sorry, you carry on.
 6 **A. Sorry, Crown servants is the way I see**
 7 **the question.**
 8 Q. You are public officers certainly, but
 9 under the Act you raise the police force, do
 10 you not? Sorry, you - the Commissioner of
 11 Police raises the police force and appoints all
 12 its officers. Is that not correct?
 13 **A. I would have to refer to it but I'm not**
 14 **going to argue; you are the lawyer and I'm**
 15 **not going to doubt you.**
 16 Q. No, no, I am not and it is not appropriate
 17 for me to argue with you on any subject, let
 18 alone the law, so I am not doing that. I am
 19 just coming to this: in that context you said
 20 yesterday to my learned friend that you had
 21 not considered the possible implications of
 22 the Data Protection Act.
 23 **A. That's correct, I don't.**
 24 Q. Including in the context of you being so
 25 intimately linked with your officers as

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<p>1 section 33 makes you.</p> <p>2 A. That's correct, I did not consider that.</p> <p>3 Q. Mr McGrail, if you thought it was</p> <p>4 entirely ethical and therefore justified</p> <p>5 because of the terrible situation that you were</p> <p>6 in, why did you not tell Mr Richardson that</p> <p>7 you were recording him on 13 May?</p> <p>8 A. Precisely because initially - we are</p> <p>9 talking about this with hindsight again?</p> <p>10 Q. No, not everything can be with hindsight,</p> <p>11 I am afraid, but you answer in whatever way</p> <p>12 you like, it does not matter.</p> <p>13 A. I just didn't. I can't elaborate other than</p> <p>14 that, I just didn't tell Mr Richardson.</p> <p>15 Eventually I did but not at the time.</p> <p>16 Q. But you agree that it suggests that there</p> <p>17 was something that was making you not do</p> <p>18 so. I mean, after all, you had told the senior</p> <p>19 management team already the day before that</p> <p>20 you had had the berating of your 36 year</p> <p>21 police career. They were all very supportive</p> <p>22 of you and were horrified by what had</p> <p>23 happened to you. If you thought it was</p> <p>24 entirely professional and ethical, why would</p> <p>25 you not have said: "Given the situation that I</p> <p style="text-align: center;">Page 89</p>	<p>1 chose - sorry, I do not want to interrupt you</p> <p>2 but let me get a question to you that I think</p> <p>3 you can answer. Or let me put it this way:</p> <p>4 why were you happy for Mr Richardson to</p> <p>5 know that you were recording the meetings</p> <p>6 of 15th and 20th but not happy for Mr Wyan</p> <p>7 to know?</p> <p>8 A. I've not said that I was not happy, it's just</p> <p>9 that I did not inform him.</p> <p>10 Q. Yes.</p> <p>11 A. It's not that - he eventually came to know</p> <p>12 but it's not - the dissecting of that particular</p> <p>13 decision, I can't offer an explanation other</p> <p>14 than it did not happen. But it was not that I</p> <p>15 was not happy.</p> <p>16 Q. Never mind whether it is happy or not,</p> <p>17 you did not, and I am suggesting to you that</p> <p>18 there is something of importance there, in the</p> <p>19 sense that you were willing to share that</p> <p>20 apparently entirely ethical conduct on your</p> <p>21 part with one officer but not with</p> <p>22 Superintendent Wyan. I am not sure he was</p> <p>23 Superintendent at the time.</p> <p>24 A. He was Inspector.</p> <p>25 Q. Inspector, thank you. Should the Inquiry</p> <p style="text-align: center;">Page 91</p>
<p>1 am in, we are in as a Force, I am going to</p> <p>2 record tomorrow's meeting"?</p> <p>3 A. It was an unprecedented impromptu</p> <p>4 situation, decision that I took before going</p> <p>5 into the meeting.</p> <p>6 Q. Right.</p> <p>7 A. It's not that I had this intention of sharing</p> <p>8 the outcome of that meeting with anybody. It</p> <p>9 was to protect from further misconstruing</p> <p>10 after Mr Llamas has completely warped the</p> <p>11 understanding that we had and he completely</p> <p>12 misconstrued that in very strong terms at the</p> <p>13 berating, so I just - it was evident that they</p> <p>14 were not impartial and I had to protect that.</p> <p>15 Q. I see.</p> <p>16 A. But it was an impromptu thing, it wasn't</p> <p>17 like I slept over it and ...</p> <p>18 Q. The first one might have been</p> <p>19 impromptu, but the second and the third one</p> <p>20 presumably were not.</p> <p>21 A. Absolutely not.</p> <p>22 Q. No. Why did you not tell Mr Wyan of</p> <p>23 15th and 20th?</p> <p>24 A. For the same reasons, it's --</p> <p>25 Q. You never told them at all. But you</p> <p style="text-align: center;">Page 90</p>	<p>1 make anything of that selection that you</p> <p>2 appear to have made about who you share</p> <p>3 your entirely ethical conduct with and who</p> <p>4 you choose not to share your apparently</p> <p>5 entirely ethical conduct with?</p> <p>6 A. I don't think the Inquiry should ...</p> <p>7 Q. I see.</p> <p>8 A. ... look into that further than what I am</p> <p>9 saying, that I did not share it without any</p> <p>10 particular reason.</p> <p>11 Q. I see. You have said that you were driven</p> <p>12 to this what you say is unprecedented</p> <p>13 behaviour on your part because of the</p> <p>14 berating that you received yesterday - the</p> <p>15 previous day, sorry - from principally you</p> <p>16 have said the Chief Minister and to a lesser</p> <p>17 extend the Attorney General.</p> <p>18 A. Yes. Add to that the other snippets that</p> <p>19 fed into the picture.</p> <p>20 (12.15)</p> <p>21 Q. Yes. What snippets were there on 13</p> <p>22 May?</p> <p>23 A. On 13 May I had the --- before 13 May I</p> <p>24 think I have mentioned them but pardon me</p> <p>25 if I forget any of them, but we had --- the</p> <p style="text-align: center;">Page 92</p>

<p>1 DPP --- rather, the AG was telling us why 2 can't we deal with Mr Sanchez via the 3 disciplinary routes, suggesting a hypothetical 4 situation of why we --- the --- what if the 5 government consented to the hacking, the 6 attempts to stall the investigation with regard 7 to not moving until the ownership was 8 established, all those snippets that I'm 9 referring to. 10 Q. Well, you must know that none of that is 11 accepted; that is your evidence and the other 12 witnesses will give evidence in due course, 13 but are you suggesting, Mr McGrail, that you 14 took what you call the spontaneous decision 15 to record the meeting of the 13th for things 16 that had happened as far back as April, for 17 many months according to yourself, email to 18 self; in other words, the Attorney General, 19 who was not the principal berating you on 20 the 12th, was already in your sights as 21 somebody that you could not safely meet 22 with without recording for many months --- 23 THE CHAIRMAN: That is a very long 24 question. 25 SIR PETER CARUANA: Yes.</p> <p style="text-align: center;">Page 93</p>	<p>1 suspicious that he might be impartial? 2 A. Yes. 3 Q. Mr McGrail ---- 4 A. It was the main reason, the suspicion, it is 5 the construing. He attacked my integrity and 6 that was a key issue for me. 7 Q. Yes, that did come through --- the sense 8 of that did come through this morning and I 9 was going to deal with that a bit later but I 10 will deal with it now since you have 11 mentioned it. Do you think it is fair to 12 describe the Attorney General's conduct at 13 the meeting of 12 May as any degree of 14 berating? 15 A. Absolutely fair. 16 Q. What did he do other than say, when you 17 --- perhaps inadvertently as you explained 18 yesterday, this business about people still 19 think of the AG's office and the DPP's office 20 as the AG's office, when you said in his 21 presence that he had advised you in relation 22 to the warrant or interventions, did you 23 expect that he could stay silent and allow that 24 simply to lie without saying --- I meant lie on 25 the record rather than lie as in fib, without</p> <p style="text-align: center;">Page 95</p>
<p>1 THE CHAIRMAN: Can you just go back to 2 the beginning. 3 SIR PETER CARUANA: (To the witness): 4 Are you suggesting that --- well, let me put it 5 to you very simply, would you have recorded 6 the meeting of the 13th but for the berating on 7 the 12th? 8 A. Probably not. 9 Q. Despite all these other long list of things 10 that you have just mentioned on the part of 11 the Attorney General beforehand? 12 A. Bearing in mind that I am combining 13 those things together ---- 14 Q. I see. 15 A. If you look at them in isolation, I 16 wouldn't have done any of that. 17 Q. So basically you thought or you must 18 have thought that the Attorney General for 19 Gibraltar was an entirely untrustworthy and 20 unreliable fellow with whom it was not safe 21 to meet without the protection of a tape 22 recorded. Was that your position? 23 A. I was suspicious of his impartiality, yes. 24 Q. You were suspicious of his impartiality, 25 so you recorded him because you were</p> <p style="text-align: center;">Page 94</p>	<p>1 saying, "Ian, that's not true, I didn't tell you 2 that"? 3 A. I would have expected him to give 4 context to it because --- and not to use it in 5 the sinister manner that it was --- it's been 6 portrayed because, as I explained, I quickly -- 7 - I mean, I've made the mistake multiple 8 times here referring one to the other and if 9 that is going to be picked up and used to ---- 10 Q. What does this sinister manner --- why is 11 it a sinister manner, Mr McGrail? You were 12 in the meeting, the three of you, in the course 13 of the exchange, rapid perhaps and 14 interchangeable, you said a statement --- you 15 attributed to the Attorney General as being 16 the source of certain advice to you and he 17 simply said, "No, Ian, I haven't given you 18 that advice," and you think that that is 19 sinister, do you? 20 A. I slipped up here with the AG and the 21 DPP and nobody has called me up other than 22 Mr Santos. I take it you mean the DPP or, 23 rather, or vice versa, the AG and Mr Santos 24 hasn't interpreted any sinister but if that is --- 25 that was the --- if that's the tone that I</p> <p style="text-align: center;">Page 96</p>

24 (Pages 93 to 96)

<p>1 mistakenly referred to the AG there, I would</p> <p>2 have expected him to say, "Ian, you're</p> <p>3 referring to the DPP," as opposed to going</p> <p>4 into the detail of ----</p> <p>5 Q. When you say ----</p> <p>6 A. --- "I've not advised you."</p> <p>7 Q. But he did not say that; all he said was,</p> <p>8 "It wasn't me, gov." What is sinister about</p> <p>9 that?</p> <p>10 A. I feel, my view is that that berating has</p> <p>11 been amplified by giving this particular</p> <p>12 instance that you are referring to, this part of</p> <p>13 the berating far more focus than what</p> <p>14 happened, simply to water down --- I mean,</p> <p>15 Mr Caruana, the --- Mr Llamas was calling</p> <p>16 my integrity into place.</p> <p>17 Q. We are just coming to that, do not worry.</p> <p>18 Would you describe the first of these only</p> <p>19 two interventions in this meeting, according</p> <p>20 to his evidence, namely, say to you that he</p> <p>21 had not given you the advice, does that fall in</p> <p>22 your definition of berating?</p> <p>23 A. In the context of that meeting, yes.</p> <p>24 Q. But I mean, you were just standing there,</p> <p>25 you were being berated, according to you, by</p> <p style="text-align: center;">Page 97</p>	<p>1 agreement or understanding which he</p> <p>2 considers that you had broken? He told you</p> <p>3 that, did he not?</p> <p>4 A. He said that he liked how I worked with</p> <p>5 him in the past and had betrayed him in ----</p> <p>6 Q. Yes, and is somebody who feels betrayed</p> <p>7 by you not allowed to say so to you without</p> <p>8 being accused of berating you?</p> <p>9 A. If he had called me into his office on a</p> <p>10 one to one, "Let's clear this up," probably,</p> <p>11 yes. Probably ----</p> <p>12 Q. And if he does it in the presence of the</p> <p>13 Chief Minister it is berating?</p> <p>14 A. Yes, he was part of that berating.</p> <p>15 Q. I see, by his presence and those two</p> <p>16 things that he said to you?</p> <p>17 A. Yes.</p> <p>18 Q. I see, okay. What need did you feel that</p> <p>19 you had --- given that this was not a meeting</p> <p>20 between two untrustworthy people, it was not</p> <p>21 just the Chief Minister and the Attorney</p> <p>22 General, what need did you feel that you had</p> <p>23 to record the meetings of the 13th, 15th and</p> <p>24 20th given that there were many neutral</p> <p>25 witnesses there, some of them very friendly</p> <p style="text-align: center;">Page 99</p>
<p>1 the Chief Minister and when during the</p> <p>2 course of your exchange with the Chief</p> <p>3 Minister and you said something, he simply</p> <p>4 said, "That's not true, I have never given you</p> <p>5 that advice." Is that of itself --- I mean, did</p> <p>6 he shout it? You said he was emotional but</p> <p>7 does berating mean something else to you,</p> <p>8 Mr McGrail?</p> <p>9 A. No, he told me, "Ian, I liked how you</p> <p>10 worked and I can't" that language is</p> <p>11 berating.</p> <p>12 Q. I see, it is the language. Let us come to</p> <p>13 the second thing ----</p> <p>14 A. It is language, tone, body language, it's</p> <p>15 the whole thing.</p> <p>16 THE CHAIRMAN: (To the witness): Let</p> <p>17 me put this to you. Did the Attorney General</p> <p>18 intervene to stop the Chief Minister berating</p> <p>19 you?</p> <p>20 A. Absolutely not.</p> <p>21 SIR PETER CARUANA: (To the witness):</p> <p>22 Did the Attorney General then go on to say,</p> <p>23 when you had said that --- this business of ---</p> <p>24 that he felt betrayed by you because he, the</p> <p>25 Attorney General, believed that you had an</p> <p style="text-align: center;">Page 98</p>	<p>1 to you, in one occasion, Superintendent</p> <p>2 Richardson and in the other Superintendent</p> <p>3 Richardson and Chief Inspector Wyan as</p> <p>4 well as, on one occasion, the Solicitor</p> <p>5 General and the DPP against whom you level</p> <p>6 no charge of being involved in some corrupt</p> <p>7 conspiracy? Was it not enough that there</p> <p>8 were so many other senior people present in</p> <p>9 the room to persuade you that you did not</p> <p>10 need the protection of a surreptitious tape</p> <p>11 recording?</p> <p>12 A. I did what I did for the reasons I've</p> <p>13 explained and I can't elaborate further on</p> <p>14 that.</p> <p>15 Q. No, and did you not think that --- did you</p> <p>16 feel after the meeting of 13 May that you had</p> <p>17 cleared the air with the Attorney General?</p> <p>18 A. To a certain extent, yes, I felt comfort</p> <p>19 that he said he would put it down to a</p> <p>20 misunderstanding.</p> <p>21 Q. Well, he is going to challenge your</p> <p>22 evidence on that but never mind, that is what</p> <p>23 you felt which is the important thing to say,</p> <p>24 but not comfortable enough, the air had not</p> <p>25 been cleared enough to make you</p> <p style="text-align: center;">Page 100</p>

25 (Pages 97 to 100)

<p>1 comfortable enough to take the view, 2 therefore, that you did not need to record 3 your next meeting with him on the 15th and 4 then again on the 20th. Is that correct? 5 A. Obviously it wasn't cleared enough and I 6 still had concerns. 7 Q. Then you met on 22 May with the 8 chairman of the Gibraltar police authority, Dr 9 Britto, and you spontaneously again decided 10 to record him? 11 A. I explained it to Mr Santos. 12 Q. Did you think that Dr Britto --- what 13 cause had Dr Britto given you to think that he 14 was --- that he lacked partiality or, rather, 15 he lacked impartiality? 16 A. I haven't said that. 17 Q. No, exactly, but had he berated you? 18 A. Not ---- 19 Q. No, had he given you any cause to 20 believe that he, too, might hold a brief for a 21 suspect in a live criminal investigation? 22 A. No. 23 Q. So on what basis, other than the paleness 24 of his face, did you think that it was ethical 25 and professional and that Lord Nolan would</p> <p style="text-align: center;">Page 101</p>	<p>1 Q. He arrived ---- 2 A. No. 3 Q. You saw him pale faced and that was 4 enough to cause to think it was ethical to 5 record him? 6 A. Pale faced, serious, like I've never seen 7 him before against a backdrop of the section 8 15 letter and that said, "Ian, something's 9 wrong, this is not right." 10 Q. In your opinion, that is enough to make it 11 ethical for you to record a meeting with 12 somebody? 13 A. Under the circumstances I was in, the 14 vulnerable position that I felt I was in, I felt 15 hounded. Now the whole of the government 16 was saying that they had lost confidence in 17 me, this was something that was really, really 18 causing me a lot of worry and I opted to do 19 that, what I did. 20 Q. Yes. 21 A. It's the backdrop, it's not ---- 22 Q. So in the circumstances and for the 23 reasons that you have just described, you 24 think it is professional and ethical for the 25 Commissioner of Police to covertly record a</p> <p style="text-align: center;">Page 103</p>
<p>1 have approved in terms of standards of public 2 ----- 3 THE CHAIRMAN: Let us just ask him why 4 he recorded the meeting. 5 SIR PETER CARUANA: (To the witness): 6 Yes, why did you think it was ethical to 7 record the meeting? 8 A. I had just received the section 15 letter, a 9 strong letter, from Mr Picardo where it was 10 saying that the government had lost 11 confidence in me, the government as a whole 12 Q. And was the chairman of the GPA 13 responsible for that? 14 A. Let me get to it. So when I arranged the 15 meeting with him, I wanted to discuss that 16 approach and the very strong terms, because 17 I knew it was a pretext to what had happened 18 on the 12th and I wanted to discuss this 19 matter with him and he said he was going to 20 come to see me anyway. Now, that straight 21 away with every suspicion circling in my 22 head, that says something's up. 23 Q. You did not know what he was going to 24 see you for? 25 A. No.</p> <p style="text-align: center;">Page 102</p>	<p>1 meeting with the chairman of the authority to 2 whom he is statutorily accountable? 3 A. For the same reasons I have explained. 4 Q. Can we put up on the screen B268, 5 please. It seems to me you were very nearly 6 caught tape recording here but, never mind, 7 you may have a different interpretation of it. 8 At the bottom of the page a near mis, I 9 suspect. On the bottom Mr Llamas says --- I 10 will have to do some spontaneous translation 11 here because it is in patois ---- 12 THE CHAIRMAN: There is a translated 13 version of this. 14 SIR PETER CARUANA: Yes, sir, but we 15 are working off these because they are more 16 accurate. (To the witness): It says --- Mr 17 Llamas says to you --- one, two, three four, 18 the one that starts "Ian," do you see that, four 19 boxes down, five boxes down, it says, "Ian, 20 you have left your phone on," and you 21 answer, "Oh, yes, I've always got it on." 22 A. No, that's not the context of the 23 conversation at all. 24 Q. Is there anything wrong with my 25 translation?</p> <p style="text-align: center;">Page 104</p>

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<p>1 A. No, it's the emphasis that you are giving.</p> <p>2 Q. What is the correct emphasis then?</p> <p>3 A. "Ian, make sure you leave your phone</p> <p>4 on."</p> <p>5 Q. "Ian" what?</p> <p>6 A. "Ian, leave your phone on, make sure</p> <p>7 your phone is on," as in, "don't switch it off</p> <p>8 for when I may be reaching you later."</p> <p>9 That's the context of it.</p> <p>10 Q. Is that your evidence on oath, Mr</p> <p>11 McGrail?</p> <p>12 A. Yes.</p> <p>13 Q. Really? Would you like to go to the</p> <p>14 other version? What does (speaks in</p> <p>15 Spanish) mean? You think that that means</p> <p>16 he was warning --- he was telling you, "I</p> <p>17 might want to speak to you later, don't turn</p> <p>18 your mobile phone off"?</p> <p>19 A. Yes.</p> <p>20 Q. Is that what you thought he was saying?</p> <p>21 A. Yes, that's the impression that I get from</p> <p>22 that, "I'm going to be calling you, don't ---</p> <p>23 leave your phone on," and I say, "I always</p> <p>24 have it on."</p> <p>25 Q. But, "Ian (speaks in Spanish)" to anyone</p> <p style="text-align: center;">Page 105</p>	<p>1 meetings other than these three --- these</p> <p>2 four?</p> <p>3 A. These four, no, and I know I haven't.</p> <p>4 Q. Sorry, that you know of or ----</p> <p>5 A. No, I haven't.</p> <p>6 Q. No, you have not.</p> <p>7 A. No.</p> <p>8 Q. So you did not record the 12th May</p> <p>9 berating meeting?</p> <p>10 A. No. If it helps, the RGP have the extracts</p> <p>11 of all the --- all the forensic extracts of my</p> <p>12 devices and they will be able to confirm</p> <p>13 whether there has been any further</p> <p>14 recordings or not.</p> <p>15 Q. I see.</p> <p>16 A. There won't be because there haven't</p> <p>17 been.</p> <p>18 Q. So can we put up A46, please, and</p> <p>19 paragraph 1, you say, "The reason I did not</p> <p>20 provide the recordings [do you see, it starts at</p> <p>21 the end of the second line] with my first</p> <p>22 affidavit is that as my legal team raised at the</p> <p>23 time, the Inquiry did not yet have policies</p> <p>24 which explained how it would use evidence</p> <p>25 provided to it which was potentially not in</p> <p style="text-align: center;">Page 107</p>
<p>1 who understands colloquial Spanish, it</p> <p>2 means, "Ian, you've left your phone on."</p> <p>3 A. No, (in Spanish).</p> <p>4 Q. Yes, I understand that is what you are</p> <p>5 saying. What reason do you think Mr</p> <p>6 Llamas would have --- so if Mr Llamas</p> <p>7 comes here and says, "I could see his phone</p> <p>8 was on," he is inventing that, too? Is that</p> <p>9 right, on the basis of your evidence?</p> <p>10 A. No, this was I think towards the end of</p> <p>11 the meeting. There had been discussions</p> <p>12 over what things were transpiring and the</p> <p>13 context is, "Ian (in Spanish)," "Leave your</p> <p>14 phone on."</p> <p>15 Q. Okay, all right.</p> <p>16 A. Not, "you have left it on." It's not the</p> <p>17 past tense, it's the present tense.</p> <p>18 Q. Okay.</p> <p>19 A. "Leave your phone on," and I said, "I</p> <p>20 always have my phone on, always." That's</p> <p>21 what it is.</p> <p>22 Q. Okay. So you have never recorded any</p> <p>23 other meetings then apart from these three?</p> <p>24 A. [No audible reply]</p> <p>25 Q. Have you ever recorded any other</p> <p style="text-align: center;">Page 106</p>	<p>1 compliance with the data protection rules."</p> <p>2 What had your legal team raised at the first</p> <p>3 preliminary hearing that as you say, "As my</p> <p>4 legal team raised at the time"? They had</p> <p>5 certainly made submissions about the need</p> <p>6 for there to be a protocol handling policy. Is</p> <p>7 that --- are you saying that you did not hand</p> <p>8 over the recordings to the Inquiry because</p> <p>9 they did not yet have a document handling</p> <p>10 policy and, therefore, you could not be</p> <p>11 certain that they would handle it within the</p> <p>12 data protection rules? Is that what you</p> <p>13 mean?</p> <p>14 A. It is along those lines that my advice was</p> <p>15 we do not hand them until such time as the</p> <p>16 Inquiry is properly set up in terms of policies</p> <p>17 and procedures.</p> <p>18 Q. This is --- I think you said this morning</p> <p>19 that your lawyers knew you had this --- by 8</p> <p>20 June 2020 you said your lawyers knew you</p> <p>21 had these recordings?</p> <p>22 A. Yes.</p> <p>23 MR WAGNER: I am just worried this is</p> <p>24 going to get into a discussion about</p> <p>25 privileged conversation.</p> <p style="text-align: center;">Page 108</p>

27 (Pages 105 to 108)

<p>1 SIR PETER CARUANA: No, no, I am not. 2 MR WAGNER: Because I am not sure ---- 3 THE CHAIRMAN: I am not going to ---- 4 SIR PETER CARUANA: I am not going to - 5 --- 6 MR WAGNER: I am not sure that that is 7 what he did say. 8 THE CHAIRMAN: Yes, one has got to be 9 careful ---- 10 SIR PETER CARUANA: I am just saying 11 what he said this morning. 12 THE CHAIRMAN: I do not think it has 13 gone too far yet. 14 SIR PETER CARUANA: No, and I am not 15 going any further, my Lord. (To the 16 witness): So even if that was the reason that 17 you did not hand the recordings over, 18 because you did not know that they could be 19 received in accordance with --- and handled 20 in accordance with data protection rules, why 21 did you not at least disclose to the Inquiry the 22 fact that you had them and would hand them 23 over when there was a document handling 24 policy? No harm would have been done by 25 that, would it?</p> <p style="text-align: center;">Page 109</p>	<p>1 before I think the chairman was appointed as 2 chairman, my lawyers shared with the 3 Attorney General and with Mr Britto points 4 arising from that recording that we were 5 asking them to consider whether the question 6 of agreeing facts ---- 7 Q. Exactly. 8 A. --- and so, therefore, they were in 9 possession of the substance of that recording 10 although they didn't know it came from a 11 recording but they were aware of the facts 12 which I believe they don't accept but that is 13 what the recording suggests. 14 Q. The point I am putting to you is that you 15 drafted your first witness statement with the 16 benefit of these tape recordings and nobody - 17 -- everybody else was deprived of the 18 opportunity to do the same by virtue of your 19 decision, for whatever reason you now want 20 to say, of not disclosing them sooner to the 21 Inquiry. Do you agree with that? 22 A. The recordings --- in terms of the 23 recordings, nobody had them so they couldn't 24 have constructed their statements on that but 25 they had, or at least Mr Britto and Mr Llamas</p> <p style="text-align: center;">Page 111</p>
<p>1 A. I can't answer that question. I've been 2 assisting the Inquiry with as much as I have 3 been able to and I can't answer that question. 4 I don't know why it wasn't disclosed. It was 5 disclosed at the time it was appropriate in 6 accordance with my advice. 7 Q. You understand the difference I am 8 making is disclose them in the sense of 9 handing them over, which you were advised 10 not to do, and then there is another sense of 11 disclosure in the sense of saying, "I have got 12 these things and I am going to hand them 13 over to you later when I think it is safe to do 14 so." It is the latter one I am questioning you 15 about? 16 A. [No audible reply] 17 Q. Okay, but you understand the 18 consequences of you not having revealed the 19 fact that you had them --- not handed them 20 over but the fact of that means that you were 21 in a position to prepare your first witness 22 statement with the benefit of detailed 23 transcripts and everybody else had to do it 24 from memory. 25 A. I would not agree with you because even</p> <p style="text-align: center;">Page 110</p>	<p>1 had the content of those recordings. 2 Q. Are you referring to the letter written by 3 your solicitor asking them to admit a whole 4 series of facts back in the early days; I cannot 5 remember the date? 6 A. Not to admit to agree. 7 Q. To agree facts and did you say to them in 8 that letter, "And please agree to them because 9 I have got a recording that shows they are 10 true." I am not accepting for a moment that 11 that letter reflects the recording, but even if it 12 had, do you think that even that was not a 13 sort of trap? 14 A. I don't --- I cannot stand with that 15 understanding because to facilitate 16 uncontaminated recollections. 17 Q. Yes, and I will tell you why I used the 18 word "trap," Mr McGrail, because in your 19 first witness statement it is noteworthy, is it 20 not, that you attach a date to no meetings, 21 suggesting a complete blur of 12 month 22 period even though you had transcripts that 23 told you, at least in respect of the three 24 meetings ---- 25 THE CHAIRMAN: This is another very</p> <p style="text-align: center;">Page 112</p>

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<p>1 long question, Sir Peter. Can you cut it 2 down? 3 SIR PETER CARUANA: Yes. (To the 4 witness): What was the reason that in your 5 meeting of --- in your first witness statement 6 it is so light on dates when things that you 7 allege to have happened, happened or were 8 said? 9 THE CHAIRMAN: Never mind the first 10 statement, he was very vague yesterday. 11 SIR PETER CARUANA: Yes. (To the 12 witness): At least in respect of what 13 happened on the 13th, assuming you do not 14 have a recording of the meeting on the 6th, 15 and you have said you have not, at least in 16 respect of the meetings on 13th, 15th and 20th 17 you were in a position to pin a precise date at 18 the time of your first witness statement on 19 anything that was discussed at these meetings 20 because you had the transcripts of them and 21 indeed the audio recordings of them but you 22 did not. Why, in your first witness 23 statement? 24 A. I think that the preliminary statement 25 things --- the lawyers took pictures and then</p> <p style="text-align: center;">Page 113</p>	<p>1 have they been disclosed to this Inquiry? 2 A. That will be for the RGP to do so. I have 3 got no access to that laptop or computer 4 terminal. 5 Q. That was, you said, at about two or three 6 o'clock in the afternoon after --- the precise 7 time in the afternoon does not matter, Mr 8 McGrail, and then you said that later at home 9 you added more and then you emailed it to 10 yourself? 11 A. It indicates --- because obviously now 12 that we are forensically going through the 13 detail, because initially in my statement it 14 says that I say I did it on the office PC or the 15 laptop but then again I'm just remembering -- 16 - all this is coming to me now, that have 17 remote access to my desktop, to my 18 computer terminal, so what I cannot 19 remember is whether I worked on the laptop 20 --- it certainly left the laptop through the 21 remote connection to the RGP server. 22 Q. You are going to have to bear with me, 23 Mr McGrail, I am a complete dinosaur when 24 it comes to ---- 25 A. So am I and that's ----</p> <p style="text-align: center;">Page 115</p>
<p>1 once the Inquiry was in a position to handle 2 the information accordingly and with the 3 protocols, that is when I dipped into the 4 further detail in terms of quoting emails and 5 dates on emails and so forth. 6 Q. We are going to move on to something 7 else, Mr McGrail, now. Can we put B74 on 8 screen, please. This is your email to yourself 9 dated 12 May. Yesterday, and please correct 10 me if I go wrong, did you say that you speed 11 typed these notes on to a desktop at around 2 12 to 3 pm on 12 May? That was an RGP 13 desktop? 14 A. Yes. 15 Q. Are you aware --- and then what 16 happened? You left the material on the 17 desktop or did you wipe it out? 18 A. I emailed it to myself, yes. 19 Q. But after you had emailed it to yourself, 20 what happened to the data that you had saved 21 on the desktop, the notes from which your 22 email was drawn? 23 A. They may have stayed there or --- they 24 may have stayed there. I can't remember., 25 Q. Do you recall erasing them? I mean,</p> <p style="text-align: center;">Page 114</p>	<p>1 Q. So forgive me if I go wrong through that 2 but --- so did I correctly understand your 3 evidence to be that these two emails, the 4 original and the one with a few amendments 5 in red - so B74 and B79 - were both sent to 6 yourself on 12 May? 7 A. One was on the 12th and one was on the 8 13th, at 1220 hours. 9 Q. No, the one on the 13th is a different 10 email, and we are coming to that. 11 A. One was sent to myself at 2205, the one 12 on the 12th ---- 13 Q. It says, "Sent on 12 May at 2205." 14 A. Yes. 15 Q. So that is why I am assuming it was sent 16 to you on 12 May. 17 A. Yes, I thought you said the two emails. 18 Q. Yes, these two emails, the original one 19 and the one with some amendments in red of 20 12 May. Both emails dated 12 May were 21 sent by you to yourself on 12 May. Is that 22 correct? 23 A. I only sent myself one email. 24 Q. Can we go back to B74, that email does 25 not bear the amendments; do you agree? If</p> <p style="text-align: center;">Page 116</p>

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<p>1 you want to refresh your memory just go 2 back ---- 3 A. Sorry. 4 Q. Go back and see if you can spot an 5 amendment and then we will look for it. 6 A. The best one would be the second 7 paragraph. Sorry ---- 8 Q. So, for example, there, you see the 9 second paragraph in the middle, "lengths and 10 he," or perhaps it is easier to spot the first 11 line of the third paragraph, "I have also 12 discussed with the AG." 13 A. The giveaway to see if there is 14 amendments is the text in red, so that email is 15 the one that I corrected on the 13th. 16 Q. That text in red does not feature in B74. 17 A. Precisely. What is B74? 18 Q. Can we go back to the top, there, there. 19 A. I am not sure where you are. I am trying 20 to be as helpful as possible. 21 Q. Why do you not just answer my questions 22 instead of trying to work out where I am 23 going with this. 24 A. Okay. 25 Q. This email that says it is transmitted by</p> <p style="text-align: center;">Page 117</p>	<p>1 covering email to explain the amendments. 2 Q. There is a covering email on the 13th. 3 Would you like to look at that? 4 A. Yes. 5 Q. What that says is, "These are further 6 recollections of the meeting with the CM and 7 the AG of Operation Delhi on 12 May. I 8 have also corrected some typos in the email 9 below in red." So on the 13th you added this 10 email and you sent this email and on the top 11 of the chain, so to speak, of the amended one 12 in red, that much I can follow and you 13 explain that you had corrected some typos. 14 A. Yes. 15 Q. What I am trying to ask you is --- what I 16 am trying to understand, and there may be a 17 perfectly simple explanation that you can 18 give me, is why the email of B74 then was 19 not sent? It was not sent, was it? The email 20 that says from --- sorry, from yourself to 21 yourself, that particular transmission, are you 22 saying it never actually was transmitted from 23 yourself to yourself? 24 A. I am saying that ---- 25 THE CHAIRMAN: There is an annex to the</p> <p style="text-align: center;">Page 119</p>
<p>1 yourself at the same time, 2205, on 12 May 2 does not appear to me to carry what appears 3 in red by way of amendments in B79. Am I 4 correct? 5 A. Absolutely. 6 Q. So this email --- so can we go back and 7 stay where we were, are you saying that this 8 email was actually never sent to yourself? 9 A. No, not at all. I sent that email to myself. 10 Q. At 2205? 11 A. Yes. It's time stamped. I've got no 12 ability to ---- 13 Q. Yes, well, here is where you are going to 14 have to be gentle with my lack of computer 15 knowledge and skills but the other one at the 16 bottom, B79, is also dated 2205. 17 MR WAGNER: I am sorry, sir, he has to 18 look at B78 to see the covering email to 19 understand 20 THE WITNESS: That's what I am trying to 21 say to you. 22 SIR PETER CARUANA: (To the witness): 23 I am sorry? 24 A. That is what I was trying to --- Mr 25 Wagner is trying to explain that there is a</p> <p style="text-align: center;">Page 118</p>	<p>1 email on the 13th. 2 SIR PETER CARUANA: Sorry, sir? 3 THE CHAIRMAN: Sending it as an 4 attachment. 5 THE WITNESS: No, sir. 6 THE CHAIRMAN: It is an email he sent to 7 himself on the 13th. 8 MR SANTOS: Perhaps I can assist. My 9 understanding of the position is that on the 10 following day, he forwards the email that he 11 sent the evening before to himself with a 12 covering email referring to the fact that he 13 has amended ---- 14 THE CHAIRMAN: Precisely. 15 MR SANTOS: --- the email below it. The 16 email shown below on 13 May is the email 17 that was sent the previous day but appearing 18 below the email that he is sending on 13 19 May, he has then edited it to correct typos. 20 SIR PETER CARUANA: Yes. 21 MR SANTOS: So the email below 13 May 22 email is the one that was never sent. That is 23 actually an amended version of the email he 24 sent to himself the night before. 25 SIR PETER CARUANA: But the email he</p> <p style="text-align: center;">Page 120</p>

<p>1 sent to himself the night before, B74, does 2 not have the amendments on it. I am just 3 trying to get --- all I am trying to do is get it 4 on the record that this ---- 5 THE CHAIRMAN: Your junior can explain 6 it to you over lunch time! 7 SIR PETER CARUANA: Sir, sorry, sir. (To 8 the witness): Mr McGrail, is it your evidence 9 that both these emails were sent? 10 A. Yes. 11 Q. Both of them were sent? 12 A. There was one sent on the 12th and there 13 was one sent on the 13th with a covering --- 14 explaining the ---- 15 Q. Was the one sent on the 12th the amended 16 one or the unamended one? 17 A. The original one. 18 Q. Unamended one? 19 A. Unamended. 20 Q. Exactly. 21 A. If you have any doubt, I think ---- 22 Q. No, no. 23 A. --- the disclosure on my part I'm sure I 24 can dig it up, bring both out as opposed to --- 25 -</p> <p style="text-align: center;">Page 121</p>	<p>1 15th and 20th May. How could an email that 2 you send yourself on 12 May and composed 3 on 12 May contain that statement in it? 4 A. Mr Richardson attended a meeting in, I 5 think it was 7 April. 6 THE CHAIRMAN: They did meet on 7 7 April. 8 SIR PETER CARUANA: I beg your 9 pardon? 10 THE CHAIRMAN: they did meet on 7 11 April, and indeed in May the year before. 12 SIR PETER CARUANA: Yes. 13 "For quite some time now I have been 14 meeting with Mr Llamas at his request to 15 discuss ... At most of these meetings, 16 particularly the latter ones," 17 plural, not singular, not the latter one, not the 18 last one, 19 "I have been accompanied by Superintendent 20 Richardson." 21 Is the use of the word - is the plural there a 22 ...? The answer may be yes, it is just a 23 mistyping. I am just putting this to you. 24 A. This was done nearly four years ago in a 25 speed typing manner as it came through my</p> <p style="text-align: center;">Page 123</p>
<p>1 THE CHAIRMAN: (To the witness): We 2 have got the point. 3 A. Okay. 4 SIR PETER CARUANA: Okay, fine. I am 5 just trying to get to the point that this email 6 here was sent on the 12th to yourself? 7 A. Yes. 8 Q. That is fine, good. 9 (12.51) 10 Now, so moving along from that position, in 11 relation to the - if we could just look at the 12 first paragraph of that email, this one, 74, that 13 was sent, you say that: 14 "For quite some time now I have been 15 meeting with HMAG Llamas," 16 Her Majesty's Attorney General Llamas, Mr 17 Llamas, 18 "at his request to discuss matters relating to 19 this investigation. At most of these meetings 20 with the AG, particularly the latter ones, I 21 have been accompanied by Superintendent 22 Richardson." 23 The only meetings that Superintendent 24 Richardson accompanied you to had not yet 25 happened on 12th, they happened on 13th,</p> <p style="text-align: center;">Page 122</p>	<p>1 head, I am thinking back of everything. The 2 paragraphs you are referring to is to give a 3 background, to log down a background of my 4 concerns, how they develop, and it is being 5 forensically examined now. I appreciate that 6 but it is what it is there and we are now 7 establishing that Mr Richardson appears not 8 to have been present at some. Certainly he 9 was on 7 April. I can't even remember the 10 dates myself of when Delhi was discussed on 11 the back of others, but this is the only thing 12 that I have to go by. 13 Q. Yes. Then yesterday you said AG had 14 told you that the investigation should not 15 progress until the issue of ownership had 16 been sorted out. Do you agree that you said 17 that and that you also said that it was 18 definitely before and not at the meeting of 7 19 April? 20 A. Yes, I do remember, I remember saying - 21 him saying that in the presence of the DPP on 22 the back of another matter, potentially crime, 23 the -- 24 Q. It was not at the meeting of 7 April. 25 Later, when you were trying to square off</p> <p style="text-align: center;">Page 124</p>

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<p>1 your reference to Mr Richardson's presence, 2 given his evidence that he had not been at 3 any before 7 April, you said that it may have 4 been - precisely what you have just said now 5 - it may have been on the back of meetings 6 about other subjects at which Superintendent 7 Richardson had not been present. Okay? We 8 agree that that is the thrust of your evidence. 9 A. I remember Mr Richardson 10 accompanying me on meetings with the 11 Attorney General. Now, because of the fact 12 that there was insignificance in terms of what 13 was said, discussed, the probing by Mr 14 Llamas at the time which was felt natural, 15 whether Mr Richardson recalls Delhi 16 discussed to a certain degree, I cannot fit in 17 his head. But I remember that Delhi featured 18 a lot, practically every time I met with him 19 on the different matters and he spoke about it 20 and -- 21 Q. His firm, clear, unambiguous evidence 22 on oath was that he attended no meetings 23 before 6 April and would have expected to 24 attend with you, as a senior investigating 25 officer, any Delhi specific meeting.</p> <p style="text-align: center;">Page 125</p>	<p>1 Q. Given the nature of this Inquiry and the 2 purpose of the witness statements, do you not 3 think he would have said so if he had? Even 4 in oral evidence, let alone in his witness 5 statement. 6 A. It's something that the investigating team 7 had more knowledge about than I did. They 8 were the ones raising the issue with the DPP 9 on the question of ownership, and they were 10 the ones having to navigate through the 11 obstacles to get that, which is why the other 12 day we relied on your own advice with 13 regards to ownership. 14 Q. Yes. Do you not think it - and not only 15 did you not, I am putting it to you, mention it 16 to Mr Richardson but nor did you make a 17 note of it yourself. Given the shocking 18 nature of this suggestion by the Attorney 19 General, was it not worthy of being even 20 noted by you? 21 A. At that stage, no. I -- 22 Q. So it was not interference then, was it? 23 A. I -- 24 Q. It became interference later. 25 A. It becomes interference when you put</p> <p style="text-align: center;">Page 127</p>
<p>1 A. I agree. But I have qualified that they 2 were not Delhi specific but these were -- 3 Q. You have - exactly, and to square this off 4 when you were questioned by CTI to this 5 effect you said that it could have been at a 6 non-Delhi specific meeting. 7 A. That's right. 8 Q. We are agreed that that is what you said. 9 Do you not think it strange and implausible 10 that the Attorney General should have told 11 you, before the 6 April meeting, that the 12 investigation, that Mr Richardson's 13 investigation should not progress until the 14 issue of ownership had not been sorted out 15 and that you should not have mentioned this 16 to Superintendent Richardson? 17 A. I can't remember Mr Richardson saying 18 that he was not aware of that. 19 Q. What, you think Mr Richardson was 20 aware of that? 21 A. No, no, I can't remember Mr Richardson 22 saying in evidence that he was not aware that 23 we had been asked not to progress the 24 investigation until - I can't remember him 25 saying that.</p> <p style="text-align: center;">Page 126</p>	<p>1 everything together. 2 Q. I see. So of itself then, of itself, standing 3 by itself, your evidence now here today is 4 that the Attorney General telling you to stop 5 an investigation until the issue of ownership 6 has been sorted out does not in your opinion 7 constitute interference in a live criminal 8 investigation. 9 A. It's an abnormal request but one that we 10 carried on working towards in trying to prove 11 the ownership, and that is where the team 12 found difficulties and that is what prompted 13 Mr Wyan to explore an alternative route. 14 Q. Can we go to the bottom of page 1 of the 15 first page of that email. You see you say 16 there at the bottom: 17 "The DPP," 18 just starting to read five lines up from the 19 bottom, 20 "the DPP again reiterated that the whole of 21 the," 22 I do not know what that means, 23 "the whole of the," 24 I suppose it means investigation or case, 25 "did not hinge on ownership of a platform. I</p> <p style="text-align: center;">Page 128</p>

1 went as far as informing the AG that it was
 2 within his power to discontinue a prosecution
 3 if he felt the need to, that I could not simply
 4 drop the matter because of the public interest
 5 reasons, that he would have to make the call.
 6 The AG asked both me and the DPP whether
 7 he could enter a nolle prosequi."
 8 So your evidence must be then that before
 9 this 12 May email, presumably in the same
 10 way as he had raised with you the ownership
 11 issues, the Attorney General had also raised
 12 with you the nolle issues at meetings, not day
 13 specific because Mr Richardson would have
 14 been there and it must have been, as I think
 15 you said - this is --
 16 THE CHAIRMAN: This is now a very long
 17 question.
 18 SIR PETER CARUANA: Yes. So he raised
 19 the nolle with you too, before the meeting of
 20 13 May.
 21 **A. I think I've clarified to Mr Santos's**
 22 **question the issue of "you've got the magic**
 23 **wand, Michael, and you can discontinue," I**
 24 **think I've covered that, and if you want me to**
 25 **I will say it again. That meeting with the**

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1 **DPP present, that was said, that he could not**
 2 **enter a nolle prosequi. That was said. Now,**
 3 **I do not know when that meeting was but it**
 4 **was on the back of another one, probably**
 5 **Kram.**
 6 Q. A non-Delhi specific meeting, taking
 7 place some time before 6 April but not at 6
 8 April?
 9 **A. Yes. Yes.**
 10 Q. The 7th, sorry, 7 April not the 6th.
 11 **A. Yes.**
 12 Q. Okay.
 13 **A. And at that point, Mr Caruana, I had a**
 14 **good relationship with the Attorney General,**
 15 **a good relationship with the DPP. There's an**
 16 **element of trust that we can, as senior**
 17 **officials, engage in --**
 18 Q. But you see --
 19 **A. -- without the necessary taking these**
 20 **notes down, because ideally, I should have**
 21 **taken a note.**
 22 Q. What, despite the fact that for many
 23 months he had been haranguing you to see
 24 how the evidence was going, according to
 25 your evidence?

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1 **A. Let me have a look what I say.**
 2 Q. Okay. But do you see --
 3 **A. I am not saying for a couple of months**
 4 **he's been haranguing me, you said?**
 5 Q. Well you say at the very top line of this
 6 email, you say, "For many months now ..."
 7 **A. But what was the descriptive term that**
 8 **you mentioned that I --**
 9 Q. Well, sorry, he had been showing an
 10 unhealthy interest in how the investigation
 11 was going --
 12 **A. Well, no, that is -- that is --**
 13 Q. -- and what evidence was --
 14 **A. That is not what this says there. It says,**
 15 **"For quite some time I have been meeting**
 16 **with the HMAG, Mr Llamas at his request to**
 17 **discuss matters relating to this investigation."**
 18 Q. I see, good. So, is it your evidence
 19 therefore now today that during all this
 20 period for some time now, however far back
 21 it might stretch, the Attorney General was
 22 not improperly interfering with your
 23 investigation?
 24 **A. He was coming up with odd --**
 25 Q. Inputs -- but you can't have it both ways.

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1 Either he was improperly interfering,
 2 showing an unhealthy interest, maybe
 3 improper interference, either he was
 4 improperly interfering or not, can you be a
 5 bit more helpful to the Inquiry about your
 6 characterisation of the Attorney General's
 7 conduct with you in relation to Operation
 8 Delhi from the day that you first briefed him
 9 in May 2019, the previous year, to the day
 10 that you first met with him at a meeting that
 11 anybody else but you can remember, 7 April
 12 2020. Can you be a bit more helpful instead
 13 of leaving everything up to insinuation and
 14 innuendo? Was he interfering with your
 15 investigation in your assessment, yes or no,
 16 during that period?
 17 **A. What period?**
 18 Q. The one I have just described for you,
 19 from the day that you first briefed him in
 20 May 2019 together with the -- the meeting at
 21 which it is not clear that he was there in
 22 person or not, May 2019, and the first
 23 meeting that we all agree took place, 7 April
 24 2020. In-between those two days, roughly a
 25 year --

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<p>1 A. The formulation of that interference in 2 my mind is developed gradually. So, he had 3 spoken about the question of the civil servant 4 being dealt with by disciplinary measures. 5 That was odd, but look, it was a suggestion. 6 Then the suggestion that the Government -- 7 whether the Government hypothetically 8 consented to the hacking. That was another 9 odd suggestion. And when you start 10 gradually moving and arriving to the berating 11 on the 12th, it was very clear to me that there 12 was interfering and I think that's how I 13 escalate my concern. 14 Q. Well, that's an answer. So, at the time 15 that it was all happening in that year, in that 16 nearly 12 month period leading up to 7 April 17 2020, whatever it is that he was asking you, 18 telling you, showing an interest in, you did 19 not, as it was happening, think that it was 20 interference in your live criminal 21 investigation, but when he berated you on 12 22 May, it all suddenly fell into place and 23 became interference all along. Is that your 24 evidence? 25 A. Part of your address is correct now and</p> <p style="text-align: center;">Page 133</p>	<p>1 ground to cover, a while. Certainly, I would 2 have thought, an hour and-a-half, this 3 afternoon. 4 THE CHAIRMAN: That is fair enough. It 5 will be hugely convenient if we could finish 6 this witness today. 7 SIR PETER CARUANA: I understand that 8 convenience is an important thing, but given 9 the very serious allegations that have been 10 made against very senior people -- 11 THE CHAIRMAN: An hour and-a-half is 12 fine. 13 SIR PETER CARUANA: Thank you. 14 (13.07) 15 (The short adjournment) 16 (14.00) 17 SIR PETER CARUANA: Good afternoon to 18 you, Mr McGrail. Just to finish off the point 19 we were on, and before I move on. Is it your 20 evidence then, that the nolle prosequi 21 referred to in that email to self was also 22 discussed at one of these non-specific - non- 23 demi-specific performance was the subject? 24 (?) 25 A. Yes, and that was prompted by - my</p> <p style="text-align: center;">Page 135</p>
<p>1 part of it is not. When the AG was 2 expressing interest in general and asking how 3 the investigation was going, that did not 4 attract any attention, adverse attention to me, 5 because it was just being curious about what 6 we were uncovering and I was explaining it. 7 And in fact he was expressing concerns as to 8 how embarrassing the situation was for 9 Government, for Blands and so forth, and in 10 terms of data protection, lack of security 11 clearance, those were ... and he at that point, 12 in those type of conversations he gave me no 13 reasons to be concerned. That is when those 14 other suggestions were starting to fall in 15 place. 16 SIR PETER CARUANA: I had not noticed 17 the time, Sir, sorry. 18 THE CHAIRMAN: No, I had not. 19 SIR PETER CARUANA: I could stop now 20 because ... yes, I think I should stop now. 21 THE CHAIRMAN: I think that will be a 22 very good idea. I am not timing you strictly 23 yet, but how much longer do you think you 24 are going to be? 25 SIR PETER CARUANA: Sir, I have a lot of</p> <p style="text-align: center;">Page 134</p>	<p>1 recollection is that that email was prompted 2 by Mr (inaudible). 3 Q. And again, did you bring that to the 4 attention of the Chief Minister, that the 5 Attorney General had mentioned the nolle 6 issue? Did you bring that to the attention of 7 the senior investigating officer, Mr 8 Richardson? 9 A. I cannot recall precisely (inaudible). 10 Q. You cannot recall whether you did, or 11 whether you did not, or you do not know? (?) 12 A. Precisely that: I can't recall whether I did 13 or whether I didn't. 14 Q. And, nor did you make any note of it? 15 Nor did you make a note of it, either? 16 A. I didn't make a note. 17 Q. So, if we could just very briefly put up 18 the... Are you familiar with the evidence of 19 the Attorney General, at paragraphs 21 to 27 20 of his first statement, so A275 for example? 21 Paragraphs 21 to 27. I do not intend to read 22 it all out, but "It was not until early-April 23 2020 that the Criminal Investigation was 24 brought to my attention again. On this 25 occasion it was as a result of a call I received</p> <p style="text-align: center;">Page 136</p>

<p>1 from the Director of Public Prosecutions 2 ('DPP'), Christian Rocca QC, who wished to 3 discuss with me certain aspects of the RGP's 4 investigation. I would like to point out that 5 the DPP very rarely [contacted me]", so it 6 gave you cause for concern that there was 7 something seriously wrong. And going 8 down, "During our discussion, the DPP" said 9 all of those things to him, and scrolling 10 down, just for you to get a sense, all that 11 explanation that the Attorney General... 12 Carry on a bit. "Each of the matters 13 above" ... still more, exactly. "I was already 14 aware of many of the matters raised with me 15 by the DPP". And then, "I considered then, 16 and still consider, that I have a legitimate 17 public interest ... in respect of such matters". 18 And then at 27, "The DPP and I therefore 19 agreed that I should seek a meeting with Mr 20 McGrail". So, all, all the evidence of the 21 Attorney General about not re-engaging with 22 this matter until that date is incorrect, in your 23 opinion? 24 A. I think the Attorney General qualifies 25 that. He was aware of all matters that were</p> <p style="text-align: center;">Page 137</p>	<p>1 28, McGrail 1). This is not true. The position 2 is as stated in paras 16-36 of my First 3 Affidavit dated 24 June 2022 ("Llamas 1"). 4 That is to say that, after the meeting that he 5 called with the Chief Minister and others 6 which took place on 13 May 2019, I had no 7 substantial, meaningful contact with IM (let 8 alone meetings) in respect of Op Delhi until 9 our first meeting on 7 April 2020." And, then 10 he goes on to say: in respect of the note that 11 IM made no reference to our meeting, "I note 12 that IM makes no reference on the 17th." I 13 think that is my point about non mentioning 14 dates. "6. IM's narrative that I was putting 15 pressure on him with respect to Op Delhi 'for 16 many months' is entirely untrue." 17 "During this period we had no meetings, I 18 made no enquiries of IM, and he provided me 19 with no briefings in relation to Op Delhi of 20 any specific or substantive kind. I cannot 21 completely rule out the possibility (although 22 I have no recollection of any instance) that, 23 in a chance encounter, perhaps in the margins 24 of a meeting on a different matter, the subject 25 of Op Delhi may have been mentioned by</p> <p style="text-align: center;">Page 139</p>
<p>1 probably brought to his attention. Which 2 provides and suggests that he had been 3 briefed on them, or he was - or somebody 4 had acquired that information. And you can 5 go further down, where he refers to that he 6 was aware. "I was", there you go, "I was 7 already aware of many of the matters raised 8 with me by the DPP". 9 Q. So, there at paragraph 25, "I was already 10 aware of many of the matters raised with me 11 by the DPP (see paras 17- 19 above), and my 12 concerns about them had existed ever since 13 Mr McGrail first 14 brought most of them to my attention in May 15 2019," that is I think the original briefing 16 meeting. Then, if you could have A299, 17 paragraphs four to seven. "In paras 12 to 27 18 of McGrail 1", this is the one we have just 19 been not looking at, the one that is alluded to 20 you, "which concern the Op Delhi 21 investigation, IM clearly seeks to create the 22 impression that I was in regular contact with 23 him in relation to Op Delhi, between 13 May 24 2019 (para 10, McGrail 1) and the execution 25 of the search warrants on 12 May 2020 (para</p> <p style="text-align: center;">Page 138</p>	<p>1 him or by me and there may have been the 2 most superficial, brief and perfunctory 3 exchange between us on that subject. But I 4 am absolutely certain that any such incidence 5 would not provide a foundation in truth for 6 the statements or insinuations made by IM at 7 paras 12 to 27 of McGrail 1." It must be 8 your case, is it, that the Attorney General is 9 incorrect when he says all those things? 10 A. He certainly had knowledge, and I 11 imparted part of that knowledge to him. 12 And, I just refer you back to his statement, 13 but -- 14 Q. Yes. 15 A. -- I - my recollection is that we spoke 16 when he raised queries with me, and - well, 17 not queries, but he asked: how is it going? 18 And: was it showing up? And the comments 19 that I alluded to: that it was embarrassing for 20 the -- 21 Q. Yes. 22 A. -- for the (inaudible). 23 Q. Yes, I am just putting to you the 24 weightiness of the cases on the whole. We 25 have all heard your version of events; this is</p> <p style="text-align: center;">Page 140</p>

35 (Pages 137 to 140)

<p>1 the learned Attorney's version of events. 2 They are not both capable of been speaking 3 to the same circumstances or situation. To 4 the extent that his is so markedly different to 5 yours, your evidence necessarily is that he's 6 mistaken, correct? That he's wrong, or 7 worse. 8 A. I think he's watering it down, but I'm glad 9 that at least he's acknowledging that he - the 10 possibility, at least, I'm - I'm glad he's 11 acknowledging that it may have happened in 12 the periphery, in the - in the fringes of -- 13 Q. No. 14 A. -- of - of other meetings. 15 Q. No, but he is not acknowledging what 16 you claim happened in the fringes; he is 17 claiming that what he describes may have 18 happened on the fringes -- 19 A. There is a -- 20 Q. That is the issue. 21 A. There is a dispute there -- 22 Q. Yes. 23 A. -- it's evident, yes. 24 Q. Okay. So, Mr McGrail, am I right in that 25 it is your evidence that what you said to the</p> <p style="text-align: center;">Page 141</p>	<p>1 understanding of the word intervention, that 2 going to the DPP and coming out all happy 3 because he had confirmed to you that in his 4 view there was enough evidence for you to 5 consider Mr Levy as a suspect, that that can 6 properly be described by the use of the 7 words: an intervention. 8 A. On its sole, I agree with you. However, I 9 have to qualify that the DPP offered his view, 10 but if (?) then -- 11 Q. I am just dealing with the word 12 intervention. Yesterday, you described police 13 intervention as meaning tactical activity, do 14 you remember that? 15 A. (inaudible) 16 Q. You said tactical activity, that's what 17 intervention is. Is seeking confirmation that 18 you were justified in treating Mr Levy as a 19 suspect tactical activity? 20 A. I w-- 21 Q. What is tactical about it? 22 A. That there's going to be action on him. 23 Q. That is tactical activity. And, is the 24 execution of a search warrant tactical 25 activity?</p> <p style="text-align: center;">Page 143</p>
<p>1 Chief Minister on 12 May was that the RGP 2 had... Words to this effect, I am not 3 ascribing these very particular words. Was to 4 the effect that what the RGP had cleared with 5 the DPP was effectively that the RGP had 6 sufficient grounds to treat Mr Levy as a 7 suspect. 8 A. Yes. 9 Q. That is the -- 10 A. In broad -- 11 Q. -- the essence of what you say you said to 12 the Chief Minister and the Attorney General 13 on 12 May. Well, Mr McGrail, do you think 14 that (I mean just sticking for a moment with 15 the ordinary meaning of the word 16 intervention in the English language), do you 17 think that the confirmation of Mr Levy's 18 status as a suspect can properly be described 19 as an intervention? 20 A. Obviously a suspect. There is a 21 subsequent intervention on the person, so in - 22 in that context there -- 23 Q. Yes, but that is not my question, Mr 24 McGrail. My question to you is: do you 25 think that, even using the layman's</p> <p style="text-align: center;">Page 142</p>	<p>1 A. I would say yes. 2 Q. Yes, we might agree on that. And, can we 3 turn up A49. This is paragraph 12 of your 4 second affidavit. Do you see the final 5 sentence there, "With all that had happened 6 since the intervention of JL, I wanted to 7 discuss these crucial findings with them." 8 A. Sorry, take me to th-- 9 Q. I am so sorry, at the very bottom there, of 10 paragraph 12. 11 A. Okay. 12 Q. The last sentence, "With all that had 13 happened since the intervention of JL, I 14 wanted to discuss these crucial findings with 15 them." This is the meeting that then never 16 took place, because it was likely overtaken 17 by events. Do you agree that here you are 18 using the word "intervention" to describe the 19 execution of the warrant? 20 A. And the voluntary request for interview. 21 Yes, you're right. 22 Q. Okay, and then if we could turn up B75 23 of your email to self. This is your email to 24 self again, sorry to keep on referring to this. 25 In the middle of the page, the date there, the</p> <p style="text-align: center;">Page 144</p>

1 second-last paragraph there, at the bottom of
 2 the page there now. "The date of execution
 3 was arranged for 12 May, though I was not
 4 aware of the time. I advised the team that,
 5 out of courtesy not obligation, I would be
 6 informing the Chief Minister, Minister of
 7 Justice and AG of this action, given the
 8 delicate nature of the intervention." Do you
 9 agree that then, also, you were using the
 10 word "intervention" to describe the search
 11 warrant?
 12 **A. I w--**
 13 Q. Yes?
 14 **A. Yes, and I --**
 15 Q. Yes.
 16 **A. -- and our - and our approach to Mr Levy,**
 17 **yes.**
 18 Q. Well, no, you were communicating the
 19 fact that you were executing. The whole
 20 point of that WhatsApp message was to brief
 21 them that you were executing the warrant.
 22 **A. Yes.**
 23 Q. That was the intervention referred to.
 24 **A. Yes.**
 25 Q. And, can you turn to B76. You say in the

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1 second paragraph on page four of that. So,
 2 that is the state document, so my hypothesis
 3 there is that the last big paragraph on that
 4 page, about four - no, sorry, I misled you, on
 5 the screen as it then was. So the last big
 6 paragraph there, about four lines up, "My
 7 hypothesis", do you see that?
 8 **A. Yes.**
 9 Q. "My hypothesis is that the AG himself is
 10 under some form of pressure to ensure that
 11 the investigation is terminated, and the
 12 intervention of JL has shown him up for not
 13 having achieved the stopping of the
 14 investigation." Now, you gave this, did you
 15 not, as a reason for his conduct on 12 May:
 16 that he was very nervous, because his failure
 17 to achieve what according to you the Chief
 18 Minister had set him as a mission he had
 19 failed to do. Do you remember saying that?
 20 **A. Yes.**
 21 Q. Yes. So do you agree that again, there
 22 you were using the word "intervention" as a
 23 description of the search warrant?
 24 **A. It's a common term that I use, yes.**
 25 Q. Yes. And, yesterday CTI asked you why

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1 you had sent the WhatsApp informing the
 2 Chief Minister that - I think you said that,
 3 that the search warrant was being executed.
 4 And, your response to my learned friend was
 5 because "It was a sensitive intervention".
 6 Again, even here, yesterday, you used the
 7 word "intervention" to describe the search
 8 warrant.
 9 **A. It's an all-encompassing...**
 10 Q. Yes. And yesterday, also in your oral
 11 evidence at page 84 of the transcript, you
 12 said twice, "in the wake of the intervention
 13 on 12 May when, to quote Miss Gallagher's
 14 opening address, 'all hell broke loose'", and
 15 then later, "It was all to do of the intervention
 16 on 12 May in relation to Operation Delhi".
 17 Do you agree that those two uses of the word
 18 "intervention" were also in relation to the
 19 search warrant.
 20 **A. Yes, in --**
 21 Q. Okay.
 22 **A. -- in - in terms of the approach to Mr**
 23 **Levy, and everything arising around that, yes.**
 24 Q. Okay. And yesterday, when you were
 25 asked by the Chairman why you had said in

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1 your message to the Chief Minister that it
 2 was in relation to the case against Perez,
 3 Cornelio and Sanchez you said to the
 4 chairman, "because the other three had
 5 already been arrested, had been processed
 6 and interviewed, but this was in relation to an
 7 intervention at Hassans for JL, Mr Levy".
 8 Do you agree you said that, too? And, that
 9 that was a reference to the search warrant?
 10 **A. I think my answer --**
 11 Q. Yes.
 12 **A. -- is...**
 13 Q. Yes.
 14 **A. I've already explained it, sir, the whole**
 15 **issue around the approach to Mr Levy.**
 16 Q. And then also, you said yesterday, "so I
 17 think it was the right call of me to advise
 18 him", meaning the CM, "as close to 9 the
 19 point of intervention as possible", when you
 20 were asked why you had bothered to brief the
 21 Chief Minister about it. So, same point, can
 22 you - can you now look at B161, at the
 23 bottom of that page, I think it is. There, I
 24 think we have been referred to this before, "I
 25 can't remember the words, Michael. What I

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1 remember saying is that, and I've said it in
 2 this, I don't need (?) to shrug responsibilities,
 3 but this matter has been dealt with in
 4 consultation with the DPP. That is what I've
 5 said, and I'm referring to an investigation and
 6 a relationship that has been back-and-forth
 7 and a number of times, that's what I'm
 8 referring to." Do you agree that, on the very
 9 day after your meeting with your Chief
 10 Minister, you could not remember the words
 11 that you had used?
 12 **A. That is true.**
 13 SIR PETER CARUANA: And, can we now
 14 play the transcript... Mr Triay, could we
 15 have the transcript of the car conversation, as
 16 I call it. And, can we also play the audio
 17 from 20516. And, you can have the
 18 transcript on screen, at the top of page two at
 19 the same time.
 20 MR TRIAY (?): 205 (inaudible)
 21 SIR PETER CARUANA: Oh, sorry, yes.
 22 20516, a transcript at the bottom of page one,
 23 top of page two.
 24 (Audio of conversation played)
 25 Q. If you could just read the transcript on the

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1 screen. Do you agree, Mr McGrail, that the
 2 audio gives the impression that you were
 3 very hesitant, not to say prevaricating a little,
 4 on what it is that you wanted to tell Mr
 5 Richardson you had said to the Chief
 6 Minister? It was not: I told them that it was
 7 because Mr Levy was now a suspect. You
 8 hummed and hawed, do you agree that that is
 9 a fair assessment of what we have just heard?
 10 **A. No.**
 11 Q. You don't?
 12 **A. No.**
 13 Q. Okay. Well, do you agree at least that
 14 five minutes (this conversation was a few
 15 minutes - however long it took you to get
 16 from Mr Llamas's office, down his stairs, into
 17 your car), you had just told him: pfft, I can't
 18 remember what I said at the meeting with the
 19 Chief Minister yesterday.
 20 **A. Can't remember the words.**
 21 Q. Yes, exactly. But, within five minutes of
 22 that you were telling Mr Richardson: "we
 23 have actually been engaged with the DPP,
 24 and I have his advice on the question of
 25 having to do these interventions." Now, do

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1 you not agree (leaving that on the scree) that
 2 in the context of the long list to which I have
 3 just taken you of your use of the word
 4 "intervention" by reference to the search
 5 warrant, that here is a direct linking of you
 6 (in the same ten words) of the words "advice
 7 from the DPP" and "intervention". Forget
 8 the fact that you suddenly remembered, on
 9 the way down the stairs, what it is you had
 10 said in the Chief Minister's office having just
 11 - forget that point. The substance of it: is that
 12 not exactly what the Attorney General and
 13 the Chief Minister allege you said to them at
 14 the meeting?
 15 **A. What - what is the question? What - say
 16 again.**
 17 Q. Is that not, "I have his advice", the DPP's,
 18 "on the question of having to do these
 19 interventions --
 20 **A. Okay.**
 21 Q. -- is that not exactly what the Attorney
 22 General and the Chief Minister attribute to
 23 you --
 24 **A. What is not --**
 25 Q. As having said to you, which you change

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1 now for: he was a suspect.
 2 **A. What is not qualified there, because
 3 obviously we (Mr Richardson and I) had
 4 common knowledge about, is that the DPP
 5 does not advise on operational matters. He
 6 was aware that we were doing a warrant, but
 7 he said that that was a matter for us, entirely.**
 8 Q. But Mr McGrail, that is not my question.
 9 The issue here is not whether he advised or
 10 whether he did not advise, or whether it is the
 11 DPP's role to advise or not the DPP's role to
 12 advise, or whether you sought the advice or
 13 whether you did not. The issue here is: what
 14 is it that you told the Chief Minister?
 15 Whether you were right or wrong, partly
 16 right or partly mistaken, is neither here nor
 17 there. The issue here, in terms of loss of
 18 confidence for alleged lying to him, is what it
 19 is that you said to them, and what it is that
 20 you said to the, the closest contemporary
 21 evidence of what you said to them (I am
 22 suggesting to you) is these words.
 23 **A. I - during, I told the Chief Minister and
 24 the Attorney General that the team had
 25 consulted the DPP throughout. That's what I**

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<p>1 told them.</p> <p>2 Q. Okay. What you told them, presumably,</p> <p>3 is what you told Mr Richardson you had told</p> <p>4 them, in the privacy of the back seat of your</p> <p>5 car, when you did not think it mattered.</p> <p>6 A. That is not my recollection, Mr --</p> <p>7 Q. No, well it may not be your recollection,</p> <p>8 but thanks to you we have the transcript.</p> <p>9 A. That is what was said in the car, and I'm</p> <p>10 telling you about my recollection of what I</p> <p>11 told them at the - at the Cabinet Room.</p> <p>12 Q. Alright. Mr McGrail, in the context --</p> <p>13 A. And - and in fact - in fact, that is what I</p> <p>14 told Mr Llamas, too.</p> <p>15 Q. Yes.</p> <p>16 A. When he asked me.</p> <p>17 Q. Okay. In the context of an angry</p> <p>18 (according to you) exchange, (well, and</p> <p>19 according to him, I suspect), angry exchange</p> <p>20 between you and the Chief Minister about</p> <p>21 whether the proper course was whether you</p> <p>22 should take a search warrant or a production</p> <p>23 order, if you used the word "intervention"</p> <p>24 (and we now know what you mean by that:</p> <p>25 the search warrant) and "I have his advice on</p> <p style="text-align: center;">Page 153</p>	<p>1 advised the team, conflating it with specific,</p> <p>2 specific --</p> <p>3 Q. But there is nothing to conflate. We have</p> <p>4 on the screen still your first recollection of</p> <p>5 what you told them. There is nothing for</p> <p>6 them to convolute, is there?</p> <p>7 A. No, no, that is not - that is a second</p> <p>8 comment. My first recollection is what I tell</p> <p>9 the AG five minutes earlier.</p> <p>10 Q. Which is that you could not remember.</p> <p>11 A. No. You are putting words into my</p> <p>12 mouth --</p> <p>13 Q. Am I?</p> <p>14 A. ... that I couldn't remember the exact</p> <p>15 words but the content of the conversation is</p> <p>16 that I told them that the DPP advised in</p> <p>17 general, had been consulted throughout.</p> <p>18 Q. And three minutes later you are saying:</p> <p>19 advised on the question of having to do this</p> <p>20 intervention.</p> <p>21 A. That is the AG telling me ... That is the</p> <p>22 AG telling me what impression they took of</p> <p>23 my - I was going to say intervention, of my</p> <p>24 input at that meeting.</p> <p>25 Q. Okay. Thank you, Mr McGrail, I have to</p> <p style="text-align: center;">Page 155</p>
<p>1 the question of having to do these</p> <p>2 interventions", is it any surprise that they</p> <p>3 were left with the impression that you had</p> <p>4 sought the advice, and obtained the advice of</p> <p>5 the DPP to choose the search warrant route?</p> <p>6 A. What are they t-- what impression they</p> <p>7 took, I - I - I don't know, but if you put it like</p> <p>8 that I mean I would have to agree that if they</p> <p>9 took that impression...</p> <p>10 Q. But when you say, "you see, even Mr</p> <p>11 Llamas says 'an impression'", are you saying</p> <p>12 that it was some strained interpretation of</p> <p>13 wholly different words that you use, or are</p> <p>14 you simply relying on the fact that you didn't</p> <p>15 use the words: search warrants?</p> <p>16 (14.26)</p> <p>17 A. It is also possible, coming to think of it,</p> <p>18 that given that both gentlemen, although</p> <p>19 prominent barristers in their own right, but</p> <p>20 not acquainted with what criminal law</p> <p>21 practices are, that they have convoluted or</p> <p>22 conflated one thing and another.</p> <p>23 Q. What two things do you think they may</p> <p>24 have conflated?</p> <p>25 A. The fact that I told them that the DPP had</p> <p style="text-align: center;">Page 154</p>	<p>1 motor on because, as you know, I am time</p> <p>2 limited. So going now to the question of</p> <p>3 improper interference, your whole case</p> <p>4 seems to be on the basis of lumping the</p> <p>5 Attorney General and the Chief Minister</p> <p>6 together for the purposes of your berating</p> <p>7 case theory. Do you agree? You keep on</p> <p>8 saying: "The Attorney General, the Chief</p> <p>9 Minister, berated me. He was the principal</p> <p>10 berator but they both berated me." They are</p> <p>11 joined at the hip as far as you are concerned</p> <p>12 on the question of berating, do you agree?</p> <p>13 A. It is not my case, I am here to provide the</p> <p>14 truth. It's not a case, it's not a position as</p> <p>15 such, it's the truth.</p> <p>16 Q. That remains to be decided by the</p> <p>17 Chairman. It is your case, everybody else</p> <p>18 has a different one. Okay. What role in your</p> <p>19 view, Mr McGrail, what role do you think</p> <p>20 that the Attorney General played in bringing</p> <p>21 about your retirement, your premature</p> <p>22 retirement? What role do you think he</p> <p>23 played in that?</p> <p>24 A. In no particular order?</p> <p>25 Q. No particular order.</p> <p style="text-align: center;">Page 156</p>

<p>1 A. He advised the GPA, or rather the 2 Governor, that the GPA had defaulted. 3 Q. Correct. 4 A. He also text, Whatsapped with the Chief 5 Minister about the possibility of the AG 6 invoking his powers under the Constitution 7 to discontinue proceedings and there was a 8 debate as to whether the search warrant was a 9 proceeding or not. 10 Q. The Chief Minister texted him, yes. 11 A. By then it is clear from the evidence that 12 the Chief Minister was seriously considering, 13 if not firmed his mind up, that I was leaving, 14 so -- 15 Q. In favour of the Attorney General, are 16 you willing to distinguish between what he 17 does as a legal adviser and what he does as a 18 party in his own right? Do you think 19 advising the Governor in response to a 20 request for advice about whether the 21 Governor's powers under section 13(1)(f) of 22 the Police Act had been engaged or not, in 23 other words was there or was there not a 24 default, do you think that makes the Attorney 25 General a co-conspirator in removing you</p> <p style="text-align: center;">Page 157</p>	<p>1 questions my integrity. And he shared that 2 with Mr Picardo and it is quoted in a one- 3 liner in the second letter of 22nd, because the 4 AG has also lost confidence in me. So the 5 Chief Minister and the Governor have 6 communicated to the Police Authority that 7 even the AG has, so he has contributed to 8 that overarching loss of confidence. 9 Q. It is said on your behalf in argument by 10 your legal team that the Attorney General 11 was in contact with the Governor and the 12 Chief Minister in the period in May. Is that 13 your case? 14 A. I don't ... 15 Q. During the critical period of decision 16 making by them, during the -- 17 A. I haven't got the sequence before me but I 18 believe that the Attorney General was aware 19 that there was movement behind the scenes 20 to see me out. From the tone and the content 21 of his exchanges with Mr Picardo. 22 Q. Being aware of things makes him 23 responsible for it, does it? 24 A. Well, if he -- 25 Q. In your view?</p> <p style="text-align: center;">Page 159</p>
<p>1 from office? 2 A. Obviously that is his last or probably 3 towards the end of his involvement. If we 4 bring his previous actions -- 5 Q. But what are they, what were they, his 6 previous actions? 7 A. He was clearly battling for Mr Levy, in 8 conjunction with Mr Picardo. 9 Q. We will come in a moment to whether he 10 was battling -- 11 A. He was, he was steering, he was steering 12 the investigation so as not to deal with Mr 13 Levy as a suspect. 14 Q. Let us assume for one moment, which 15 obviously -- 16 A. That for me is inappropriate. 17 Q. Yes. Let us leave aside for one moment 18 the question - let us assume for a moment, 19 which is not accepted that he was, that he 20 was battling for the suspect and that he was 21 engaged in inappropriate behaviour, how 22 does that contribute to your retirement? 23 A. It is feeding to a narrative that I am not 24 trustworthy, that he has lost all confidence in 25 me, that he can't work with me again, and he</p> <p style="text-align: center;">Page 158</p>	<p>1 A. If he goes along with it, if he -- 2 Q. What do you mean "goes along with"? 3 He has got no statutory power in this area, he 4 cannot contribute. His loss of confidence in 5 you is not alleged to be the reason for why 6 anybody did anything. I am just trying to put 7 to you, Mr McGrail, that the extent to which 8 you rope in the Attorney General into what 9 you regard as a conspiracy to remove you 10 from office is not sustained on the evidence 11 and is exaggerated for self-serving purposes 12 on your part. 13 A. I don't agree with you at all. 14 Q. All right. That is your evidence. Now, 15 did the Chief Minister or the Attorney 16 General make any attempt whatsoever on 12 17 May to stop the RGP doing as it pleased in 18 relation to the execution of the search 19 warrant? 20 A. They did, in my interpretation, by 21 applying the pressure that they did, with the 22 threat included. I took it to mean that I 23 should call back the officers from the offices 24 of Hassans, that I should stop the activity 25 against --</p> <p style="text-align: center;">Page 160</p>

40 (Pages 157 to 160)

1 Q. So you took it. You took the berating to
 2 mean stop. Did the Attorney General and the
 3 Chief Minister know at what stage the
 4 execution was, during this meeting? In your
 5 own words, it had just started.
 6 **A. They must know that it was just**
 7 **happening, it was still happening. They were**
 8 **very clear, because it was only a matter of**
 9 **minutes between me notifying and the**
 10 **berating commencing.**
 11 Q. Mr Richardson has said that the execution
 12 of the warrant on the day went entirely
 13 according to the RGP's plan. Do you agree
 14 with that?
 15 **A. No.**
 16 Q. You disagree with both of them.
 17 **A. Each officer is accountable for his actions**
 18 **and his decision making, and to allow Mr**
 19 **Levy nine or ten hours to voluntarily hand**
 20 **over the phones, I perhaps would have dealt**
 21 **with it differently.**
 22 Q. But who is responsible for that? Are you
 23 blaming the Chief Minister and the Attorney
 24 General for the fact that Mr Richardson
 25 decided to let him give it voluntarily and wait

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1 until his technicians had copied it before
 2 doing so?
 3 **A. No.**
 4 Q. Is that interference by the Attorney
 5 General and the Chief Minister?
 6 **A. No.**
 7 Q. So --
 8 **A. No, not in --**
 9 Q. ... why was not your answer just no?
 10 They did nothing.
 11 **A. They did --**
 12 Q. That is the short answer?
 13 **A. It caused me to call Mr Richardson up to**
 14 **the station. That is the effect that it had.**
 15 Q. No, no, I am about to ask you that. It
 16 may have caused you but - so you called
 17 them back. Mr Richardson has given
 18 evidence that that was not interference, that
 19 calling out was not interference, but what is
 20 your evidence about what you said to Mr
 21 Richardson?
 22 **A. I can't remember the content of it but I**
 23 **must have called him back to brief him as to**
 24 **what had --**
 25 Q. You must - you cannot remember what

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1 you called him out for?
 2 **A. This is over four years ago.**
 3 Q. Would it not have been in your witness
 4 statement if you had felt that the berating was
 5 so severe that it caused you to take steps to
 6 interrupt the normal process of warrant
 7 execution? Would that not have been in one
 8 of your seven affidavits?
 9 **A. I think it is.**
 10 Q. I do not think it is.
 11 **A. I think it is.**
 12 Q. What do you recall your evidence to be
 13 on that?
 14 **A. I would have to look through the - there**
 15 **are several ones but I think it is covered, not**
 16 **in the eloquent context that you - expression**
 17 **that you put it, but in my words it says words**
 18 **to the effect, and I wouldn't be able to direct**
 19 **you to it, but it says that I took the**
 20 **impression that it was meant to cause me to**
 21 **stop the investigation, words to that effect.**
 22 Q. Whatever it is that you told Mr
 23 Richardson, which you cannot now
 24 remember, certainly had zero effect on him,
 25 according to his own sworn evidence. Do

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1 you agree?
 2 **A. I think he had it in the back of his mind**
 3 **too, that I had been berated. I think**
 4 **everybody in the command team was**
 5 **affected by it.**
 6 Q. Really? Okay. Okay. And why did you
 7 call him back to put him under what you
 8 thought was that pressure? Was this the
 9 Chief Minister's decision or your decision, to
 10 call him back to tell him whatever it is you
 11 told him that you cannot now remember?
 12 **A. My decision, my decision.**
 13 Q. Why did you do that? Why did you think
 14 it appropriate to put the fear of God into an
 15 officer going about the execution of his duty?
 16 **A. I needed - I felt I needed to inform him**
 17 **that this was also another potential threat to**
 18 **our activity.**
 19 Q. Why?
 20 **A. Why not?**
 21 Q. For all the reasons that you have been
 22 alleging for the last three years, that is why
 23 not. Okay. So on the meeting of 7 April do
 24 you agree that no interference with a live
 25 criminal investigation took place at the

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<p>1 meeting of 7 April? 2 A. That no ...? Say again. 3 Q. That no interference with your live 4 investigation, Delhi, took place at that 5 meeting of 7 April. 6 A. I agree. 7 Q. You agree. So in respect of the meetings 8 of 13th, 15th and 20th May, do you agree 9 that the purpose of the meetings was to 10 advise upon, discuss and agree a way 11 forward for dealing with Hassans' legal 12 challenge to the warrant and the misfeasance 13 allegation against Mr Richardson? 14 A. I was called to that meeting by Mr 15 Llamas so, yes, I agree it was to deal with the 16 correspondence from Hassans, yes. 17 Q. Yes. Were you proposing to defend 18 yourselves without referring to the Attorney 19 General? Had you not sought their advice 20 and help? 21 A. Certainly, he had been - this is what I 22 mean, I had -- 23 Q. Yes, it does not matter who convened the 24 meeting. Did the meeting respond to the fact 25 that you had reached out to them for legal</p> <p style="text-align: center;">Page 165</p>	<p>1 that point -- 2 SIR PETER CARUANA: Sorry, what is the 3 answer to my question, Mr McGrail? Do you 4 agree that that was the purpose and the 5 reason, the context of the meeting? 6 A. Yes, as a -- 7 Q. Okay. 8 A. Can I ...? 9 Q. Yes, you want to add to yes, by all 10 means. 11 A. That meeting highlights in my view that 12 there had been already previous 13 engagements, previous discussions, previous 14 meetings on Delhi. Everybody was aware of 15 it and therefore it was a natural progression 16 along that relationship that had been 17 established with the prosecuting office -- 18 Q. All right. 19 A. ... and the police to deal with ... 20 Q. All right. 21 A. ... the bombardment of letters -- 22 Q. Okay. I am sorry to cut you a little bit 23 short but I need to get on, and I think you 24 made that perfectly clear from what you said. 25 Do you agree, Mr McGrail, that what</p> <p style="text-align: center;">Page 167</p>
<p>1 assistance in the face of this correspondence? 2 MR WAGNER: I am sorry to rise but there 3 is a number of times now where the witness 4 has not been able to finish his answer, and I 5 just wanted to ask that he is able to finish his 6 answer. 7 SIR PETER CARUANA: Certainly. You 8 take as long as you need to answer the 9 question. Do you accept that the purpose of 10 this meeting responded to the fact that you 11 reached out to the Government's law officers, 12 the two most senior ones, in the context and 13 because of the legal challenge letters that you 14 had received from Hassans? 15 A. That meeting was a follow up, and on 16 that basis it was to deal with the Hassan 17 letter, the first one, I can't remember if it was 18 an email -- 19 THE CHAIRMAN: Sorry, I have lost the 20 thread of this. I thought you were talking 21 about 7 April. 22 SIR PETER CARUANA: No, sir, I am 23 talking about the meeting of 13 May. 24 THE CHAIRMAN: Okay, I am sorry. 25 A. But what I want to highlight is that by</p> <p style="text-align: center;">Page 166</p>	<p>1 emerged from these meetings - I am talking 2 collectively about them now, we are going to 3 drill down to them individually - but what 4 emerged was a consensus for achieving a 5 number of simultaneous goals? The first was 6 to call Hassans' bluff by giving them seven 7 days to challenge - to put up or shut up 8 eventually, effectively, give them seven days 9 to challenge your seizure of the devices 10 before you inspected them, one; tactically 11 seeking to extract useful evidence from Mr 12 Levy which would not have been 13 forthcoming if you had cautioned him and he 14 had given a no comment interview? Do you 15 agree with those two as objectives, as 16 consensuses that emerged? I am going to 17 give you two more but I do not want the 18 question to be too long. That is two out of 19 four. Do you agree that those were two of 20 the four objectives, or would you rather hear 21 the four of them? 22 A. The way you are pitching that question -- 23 Q. Well, I am allowed to formulate the 24 questions. You can answer as you please, 25 but I do not have to formulate the questions</p> <p style="text-align: center;">Page 168</p>

42 (Pages 165 to 168)

<p>1 in the way it suits you, Mr McGrail. 2 A. No, but it does influence my answer 3 because you may be seeking an answer that I 4 am not able to deliver on that particular 5 question as you are pitching it. 6 Q. Whilst leaving the RGP free and able to 7 pursue Mr Levy if it decided that is what it 8 wished to do, and at the same time robustly 9 rejecting the claims of criminal wrongdoing 10 against Mr Richardson, and also defending 11 the proposition that Mr Levy was not a 12 suspect, in other words rejecting the 13 proposition that any of the letters that had 14 been sent meant that Mr Levy was not a 15 suspect. Do you think that that is a fair or 16 unfair characterisation of the business that 17 was transacted at these meetings, the 18 discussions that took place and the consensus 19 that emerged by way of achieving the 20 objectives -- 21 THE CHAIRMAN: This is another very, 22 very long question. 23 SIR PETER CARUANA: I do not think it 24 makes any difference whether they are short 25 or long, sir, that is the reality --</p> <p style="text-align: center;">Page 169</p>	<p>1 interview under caution, that the issue was 2 that he was a suspect, so that is when the 3 massaging starts. To the extent that by the 4 third I had, in a way, relented and reluctantly 5 consented -- 6 Q. Okay. 7 A. ... because we know that that was not the 8 process that had to be followed. But I did so 9 on the back of having to rely on the DPP in 10 particular, because I know he is the one that 11 prosecutes, but obviously the AG was there 12 with a very, very acute interest, I had to rely 13 on their input and their views because 14 without their support I don't think Delhi 15 could progress. 16 Q. So you end up to say you were dragged 17 kicking and screaming to a place you did not 18 want to go. 19 A. No, I have not said that, I have not said 20 that. I have said that there was a careful and 21 deliberated massaging of the process. 22 Q. You mean there was a lengthy discussion 23 over three meetings which considered the 24 matters collectively and collegiately together, 25 which resulted in a consensus between four</p> <p style="text-align: center;">Page 171</p>
<p>1 THE CHAIRMAN: It does because 2 everybody -- 3 SIR PETER CARUANA: I did, but I did try 4 to break it up into parts and he would not 5 answer either, so ... 6 THE CHAIRMAN: Break it up into shorter 7 parts. 8 SIR PETER CARUANA: Okay. That the 9 first objective was to call Hassans' bluff by 10 giving them seven days' notice to put up or 11 shut up by challenging if they thought that 12 the seizure of the devices were important. 13 Do you agree that that was one of the four 14 objectives? 15 A. No. 16 Q. It was not. 17 A. If we deal with the consensus and you are 18 saying that we are talking about the 19 collective three meetings, the first meeting 20 we left with the impression that we were 21 going to proceed as intended with the follow 22 up voluntary interview of Mr Levy. Then 23 there was an element of massaging of that 24 concept in the second meeting that started the 25 dwindling of the status to that of - not to</p> <p style="text-align: center;">Page 170</p>	<p>1 grown men, none of which was obliged to 2 accept the views of the other, and which 3 resulted in agreement which was then carried 4 out. Is this not the reality? 5 A. No. 6 Q. Okay. So can we turn then to the 7 transcript of the meeting of 13 May, B10 - 8 118, as to purpose, at the top there: 9 "I, I, Ian, think, Ian, to be honest with you, 10 Ian, we are meeting with, um, because you 11 have rightly, um, sought our legal advice 12 anticipating what most certainly is going to 13 come." 14 Is that untrue? 15 A. (Pause) I attended that meeting -- 16 Q. No, the question is perfectly simple, Mr 17 McGrail. Is that true or an untrue statement 18 by the Attorney General? 19 A. It's not the context that I take -- 20 Q. The statement. Never mind - we know 21 that you want to put everything into your 22 own context, Mr McGrail, that is clear to 23 everybody. The question is: is that statement 24 by the Attorney General that that is why you 25 were meeting true or untrue?</p> <p style="text-align: center;">Page 172</p>

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1 **A. It is true.**
 2 Q. It is true. At B129, so in between there
 3 was a - the Chairman is going to read these
 4 transcripts and he will form his own view
 5 about the meaning and --
 6 THE CHAIRMAN: I am going to listen to
 7 the recording as well.
 8 SIR PETER CARUANA: As well, sir.
 9 THE CHAIRMAN: Yes.
 10 SIR PETER CARUANA: Exactly. But as to
 11 the purpose again, at the top there, do you see
 12 Mr Rocca:
 13 "In all reality we're going to get to a stage
 14 where we are going to go through pain, pain,
 15 and actually here there is not enough even to
 16 start with James Levy. Could we possibly
 17 ..."
 18 Now, that is the DPP against whom you
 19 make no serious allegations, not the Attorney
 20 General. Is it your view that when Mr Rocca
 21 says this to you he is, just as the Attorney
 22 General, according to you, is the Chief
 23 Minister's wing man, that now the DPP is the
 24 Attorney General's wing man? Is that what
 25 you are saying? That he is - I think you use

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1 one inconsistent with the other?
 2 **A. No, I agree, they are both different. But**
 3 **that is the process of the investigation. You**
 4 **have to seek out the evidence.**
 5 Q. Right. So when --
 6 **A. And in fact, further on, I think Mr**
 7 **Richardson disagrees with the DPP, in terms**
 8 **of - in that particular caption, Mr Rocca**
 9 **minimises Mr Levy's import in it. But yet**
 10 **again, further down Mr Richardson disagrees**
 11 **with that and says: "I don't agree with that, I**
 12 **think we have sufficient."**
 13 Q. The point I am making - whether Mr
 14 Richardson agrees with the Director of
 15 Public Prosecutions or not is really neither
 16 here nor there. The point is that Mr Rocca is
 17 expressing the view that in his opinion - I do
 18 not know if he is right or wrong - in his
 19 opinion there was insufficient evidence to
 20 secure a conviction of Mr Levy, and that is
 21 not inconsistent and therefore changing his
 22 mind in a sinister way from what he had
 23 originally told you, which was simply there
 24 was enough material to treat him as a
 25 suspect. Why is this the Director of Public

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1 mouthpiece, for him.
 2 **A. What I said was that Mr Llamas was not**
 3 **...**
 4 Q. Yes.
 5 **A. ... as experienced.**
 6 Q. Yes, well, that for sure, but when Mr
 7 Rocca says this to you, do you think he is
 8 expressing his own view or mimicking the
 9 Attorney General's improper views?
 10 **A. You are asking me whether I think, and I**
 11 **would respond to that, because the comment**
 12 **by Mr Richardson as we left, that he said that**
 13 **the DPP had changed somewhat but he didn't**
 14 **want to drop him in it, to me suggests that the**
 15 **DPP was flexible to the AG's position.**
 16 Q. Really?
 17 **A. That's from - you are asking me what I**
 18 **think, and that is --**
 19 Q. What was the original view of the DPP?
 20 Was it not that there was enough evidence to
 21 treat him as a suspect? Yes?
 22 **A. Yes.**
 23 Q. Is this not about whether there is enough
 24 evidence to secure a conviction? Is there not
 25 a difference between the two things? Why is

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1 Prosecutions changing his mind?
 2 **A. Why I think? Because --**
 3 Q. Why is it that? Why does it amount to a
 4 change of mind?
 5 **A. I don't - I cannot answer that --**
 6 Q. (Inaudible).
 7 **A. ... but if you ask me what I think then I**
 8 **can offer it, but I can't answer because I don't**
 9 **know for certain.**
 10 Q. Then it goes on:
 11 "We have to because afterwards no fine,"
 12 this is Mr Rocca, this is you and Mr Rocca,
 13 "... in the fairness, in the interests and the
 14 fairness of the others I totally agree with you,
 15 and that, and that,"
 16 and then Mr Richardson says:
 17 "Because if on Monday, because if James
 18 comes up with an explanation,"
 19 and the DPP says:
 20 "That's it,"
 21 and Mr Richardson continues:
 22 "... that holds enough water, that doesn't
 23 need probing too deeply, this could be put to
 24 bed."
 25 "This is my point,"

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<p>1 Mr Llamas intervenes, 2 "this is my point. In the end ..." 3 (Loud noise obliterating words) 4 SIR PETER CARUANA: I beg your pardon, 5 sir. 6 "By this you mean Jame - Haime Levy's 7 information." 8 Mr Richardson says: 9 "Yes." 10 "I mean the case is still there," 11 and Mr Richardson, 12 "Yes." 13 Does that read to you like a Mr Richardson 14 that is under the cosh of improper 15 interference by the Attorney General, or the 16 DPP for that matter? 17 A. I take you towards the end, I take you 18 towards the end of this transcript where I 19 raise -- 20 Q. No, you can take me there in the end. 21 Right now what I want is for you to answer 22 my questions about this passage. 23 A. It cannot be dealt with in isolation. 24 Q. But I think it can be, Mr Richardson(sic), 25 it is you who does not want to deal with it in</p> <p style="text-align: center;">Page 177</p>	<p>1 probing too deeply, this could be put to bed." 2 This is Mr Richardson speaking, not -- 3 A. What is said before that? What leads to 4 that? 5 Q. What leads to that is the discussion about 6 the relative merits of using Mr Levy as a 7 witness or as a suspect. The is the whole 8 tenor of all three meetings, in respect of one 9 limb. But in these words, Mr McGrail, just 10 say yes or no, it really does not matter to me. 11 A. It's very difficult to -- 12 Q. All right. 13 A. ... because this is a conversation of two 14 hours -- 15 Q. All right, yes. 16 A. ... that is -- 17 Q. I am asking you about these words. 18 A. Yes, I know, and I wish I could help you 19 but I cannot -- 20 Q. (Inaudible). 21 A. ... without giving it context to the 22 remainder of what happens before, what 23 happens afterwards -- 24 Q. The Chairman will give the context when 25 he reads the whole document. I am asking</p> <p style="text-align: center;">Page 179</p>
<p>1 ... So just answer my question. I am going 2 to take you all the way through this 3 transcript, do not worry, I am not just dealing 4 with just one. Do you agree that on this basis 5 there is little sign of an under the cosh 6 Commissioner of Police or an under the cosh 7 Mr Richardson being dragged to where they 8 do not want to go? 9 A. Direct me to it, please, if you do not 10 mind, so I can read it. 11 Q. Just the conversation there. You have got 12 it in front of you on the screen, I have just 13 read it out to you. 14 A. Yes, but I want to assimilate it. Where 15 do you want me to - where's the point that 16 you want me to take? 17 Q. For a start, Mr Richardson himself says, 18 in the middle: 19 "Because if on Monday James, Haime," 20 Mr Levy, 21 "comes up with an explanation ..." 22 A. Yes. 23 Q. DPP intervenes: 24 "That's it." 25 "... that holds enough water that doesn't need</p> <p style="text-align: center;">Page 178</p>	<p>1 you about these words. Can we turn to B136 2 -- 3 THE CHAIRMAN: His answer to your 4 question is -- 5 SIR PETER CARUANA: Yes, B136, sir. 6 THE CHAIRMAN: ... he maintains that you 7 are taking this out of context and there are 8 other passages on which -- 9 SIR PETER CARUANA: You can decide 10 that, you can decide that in due course and 11 we will be going through a lot of these. 12 B136. 13 A. I'm sorry, I don't want to come across as - 14 - 15 Q. No, no, you come across as you please. 16 B136. Don't you worry about that, Mr 17 McGrail. B136. In the middle there: 18 "I think there is a simple way to defuse that 19 paragraph, that is concerning paragraph, you 20 certainly picked up. I would reply," 21 so obviously this is a discussion about how 22 you reply to a letter, 23 "I would reply saying: 'Given the allegations 24 you are making will sit the seven days, it's in 25 a sealed bag, it will not be touched. If you</p> <p style="text-align: center;">Page 180</p>

45 (Pages 177 to 180)

<p>1 think you have grounds for making legal 2 application to any court for review for an 3 appeal'," 4 and then you intervene. Do you agree that 5 the idea for the seven day standstill came 6 from the DPP and not from the Attorney 7 General, because that is the first mention of it 8 in this meeting? 9 A. I would have to take your word for it 10 without referring further on. 11 Q. Okay. If it is the - do not take my word 12 for it - if it is the first, and the Inquiry can 13 find this out for themselves, if it is the first 14 meeting, the first mention of a seven day 15 standstill, do you agree it was not the 16 Attorney General's suggestion but the DPP's? 17 A. I would if that's the case, yes. 18 Q. Thank you. B141, so starting from the 19 box just above 01, 10.59, Mr Llamas: 20 "So your position remains the same," 21 he asks you whether your position has 22 changed, 23 "your position remains the same, is that you 24 are going to interview him on Monday." 25 Mr Richardson:</p> <p style="text-align: center;">Page 181</p>	<p>1 seven days to collect his --- as Mr --- to 2 prepare his position for the subsequent 3 voluntary interview on a date that was 4 determined. That was --- Mr Richardson is 5 referring to that. 6 Q. Mr Llamas goes on, "Okay, then. In the 7 meantime what are you doing with the 8 phone?" Mr Richardson, "Nothing." Mr 9 Llamas, "At the moment it's in a blue bag." 10 The superintendent, "No, no, this blue bag is 11 advice he has got from Silk in the UK that 12 describes correct procedures, they don't have 13 them in bags, green bags." "Okay, it's a 14 sealed bag." The DPP, "Yes." Mr Llamas, 15 "So at the moment it's a sealed bag and it's 16 going to remain sealed." "Yes," and he asks, 17 "Until when." Mr Richardson says, "Until --- 18 -" and Llamas intervened, "Until after the 19 interview?" "Until we're in a position to get 20 somebody to examine the contents of it." 21 "But would you wait until the interview 22 first?" "We would do the interview first 23 because that might take --- it might take a 24 very long time." Does that sound like 25 improper interference to delay by seven days</p> <p style="text-align: center;">Page 183</p>
<p>1 "Assuming he voluntarily attends, and if he 2 doesn't that would put us in an impossible 3 position." 4 Mr Rocca: 5 "Because then you have to arrest him." 6 Mr Richardson: 7 "We have to arrest him. I am hoping that we 8 don't get to that. This is why he has been 9 given a week to get ready to prepare his 10 position." 11 Is there any suggestion that anybody has put 12 pressure on Mr Richardson there to give him 13 a week to prepare his position in the hope of 14 avoiding the need to arrest him? Is that also 15 the result of improper interference by the 16 Attorney General and the DPP? 17 (14.56) 18 A. That was a pre-arranged tactical decision 19 on the part of Mr Richardson, I believe. 20 Q. All right, to treat him differently to 21 others? 22 A. No, no, no, no, no. 23 Q. Okay. 24 A. I will explain. The seven days is close to 25 the intervention, he's allowing Mr Llamas</p> <p style="text-align: center;">Page 182</p>	<p>1 the examination of the phone? 2 A. It sounds an odd, inquisition by the 3 Attorney General showing ---- 4 Q. Okay. 5 A. --- expressing an interest on the mobile 6 phones when you wonder why. 7 Q. Okay. I think one of the issues ---- 8 THE CHAIRMAN: I do not want to sound 9 like a speaking clock, but it is three o'clock 10 very nearly. 11 SIR PETER CARUANA: I am sorry. 12 THE CHAIRMAN: I don't want to sound 13 like a speaking clock but it is three o'clock. 14 SIR PETER CARUANA: You are sounding 15 just like a speaking clock, sir. 16 THE CHAIRMAN: Yes, well --- 17 SIR PETER CARUANA: But I have got to 18 get through material ---- 19 THE CHAIRMAN: You have got quarter of 20 an hour. 21 SIR PETER CARUANA: Is that the amount 22 of time that you are ---- 23 THE CHAIRMAN: I gave you an hour and a 24 quarter this afternoon and you have had an 25 hour.</p> <p style="text-align: center;">Page 184</p>

46 (Pages 181 to 184)

<p>1 SIR PETER CARUANA: Yes, and ----</p> <p>2 THE CHAIRMAN: Sorry, I gave --- okay,</p> <p>3 you are quite right, an hour and a half.</p> <p>4 SIR PETER CARUANA: Sir, if you are not</p> <p>5 interested in my leading this evidence, then I</p> <p>6 will not. It is really that simple. (To the</p> <p>7 witness): Page 142 ----</p> <p>8 THE CHAIRMAN: I understand entirely the</p> <p>9 nature of your case on these interviews and I</p> <p>10 will come to my own decision on it.</p> <p>11 SIR PETER CARUANA: So at 142 --- the</p> <p>12 nature of the government parties; claims, sir,</p> <p>13 is that there is absolutely not a shred of</p> <p>14 evidence in any of these documents that there</p> <p>15 is any cajoling or pressure.</p> <p>16 THE CHAIRMAN: I understand the</p> <p>17 position entirely. You are trying to persuade</p> <p>18 me, not the witness.</p> <p>19 SIR PETER CARUANA: No, but I am</p> <p>20 trying to put to the witness the fact that this is</p> <p>21 not consistent with his evidence ----</p> <p>22 THE CHAIRMAN: If I may say so, you ask</p> <p>23 very long questions. He gives very long</p> <p>24 answers ----</p> <p>25 SIR PETER CARUANA: I cannot help but</p> <p style="text-align: center;">Page 185</p>	<p>1 before the devices go through forensic</p> <p>2 examination. That is in a nutshell ----</p> <p>3 Q. Except that in your case you hold this up,</p> <p>4 firstly, as being the Attorney General's idea</p> <p>5 and then attributing him the motive that it is</p> <p>6 for the improper purpose of interference.</p> <p>7 That is the importance of this.</p> <p>8 A. I am sorry, but I don't raise anything</p> <p>9 against the Attorney General with regard to</p> <p>10 the procedure to be adopted in anticipation of</p> <p>11 a challenge and certainly I have not</p> <p>12 anywhere in my evidence referred to that.</p> <p>13 Q. The arguments put on your behalf are</p> <p>14 your arguments, it is your case. I just want to</p> <p>15 get to the summing-up, so on page 153, the</p> <p>16 Attorney General says, "Shall we wrap up</p> <p>17 and as far as I understand what we have</p> <p>18 discussed is that Paul is going to reply to the</p> <p>19" You say, "No, no, I will." "So you, Ian,</p> <p>20 are going to reply to this letter to Lewis, no."</p> <p>21 "Lewis Baglietto," says Mr Richardson. Mr</p> <p>22 Llamas, "In relation to the first paragraph,</p> <p>23 (inaudible) the same points saying that no</p> <p>24 material has been improperly downloaded</p> <p>25 until after the interview on Monday." Then</p> <p style="text-align: center;">Page 187</p>
<p>1 read what is there ----</p> <p>2 THE CHAIRMAN: Hang on a minute; he</p> <p>3 gives very long answers and the net result is</p> <p>4 that the speed is running out.</p> <p>5 SIR PETER CARUANA: The net result is</p> <p>6 that I run out of time, sir, if the witness gives</p> <p>7 long answers. (To the witness): In the</p> <p>8 middle of page 142, B142, the DPP says,</p> <p>9 "For the next week or two we will keep it in</p> <p>10 a sealed bag. If you think it's unlawful look</p> <p>11 at the end of the day," and he basically says</p> <p>12 to challenge that it has to be the response of</p> <p>13 the letter. Do you think the DPP was</p> <p>14 cajoling you there?</p> <p>15 A. No, he was advising --- remember that</p> <p>16 the challenge from Hassans suggested that</p> <p>17 they were going to challenge the legality of</p> <p>18 the warrant.</p> <p>19 Q. Yes.</p> <p>20 A. And it would not have been appropriate</p> <p>21 to commence examination of the device</p> <p>22 knowing that there was a challenge coming</p> <p>23 in and it's a prudent thing to do to get the</p> <p>24 opportunity to get over the challenge that lay</p> <p>25 before the courts, before the warrant ---</p> <p style="text-align: center;">Page 186</p>	<p>1 Mr Richardson says, "Can you please go a bit</p> <p>2 slower because I want to make sure that I</p> <p>3 have an accurate record of what we have</p> <p>4 agreed." Okay. Do you agree that that is ---</p> <p>5 there is no evidence of cajoling there but,</p> <p>6 rather, evidence of an agreement?</p> <p>7 A. Yes.</p> <p>8 Q. I will leave to closing the litany of</p> <p>9 instances of that sort. Can we move to the</p> <p>10 transcript of 15 May. On page B237 --- no,</p> <p>11 let us cut half of them out and just go to</p> <p>12 some. So B239, do you agree that in the</p> <p>13 middle --- and we have been to this, so let me</p> <p>14 just read the part that Mr Gibbs did not read,</p> <p>15 Mr Gibbs took you from the line at 1511 and</p> <p>16 then skipped the bit in between and went to</p> <p>17 the line at 1615 and in the middle you say,</p> <p>18 "So Mr Rocca said we would not get a</p> <p>19 conviction any time based on what we've got</p> <p>20 now." "If Haim gives us a 'no comment' and</p> <p>21 I'm assuming" and you say, "Maybe,</p> <p>22 maybe, that is maybe tactically if he says, 'no</p> <p>23 comment,' and that is the evidence that we</p> <p>24 cannot --- from his account and we cannot</p> <p>25 progress him further and stick anything on</p> <p style="text-align: center;">Page 188</p>

47 (Pages 185 to 188)

1 him he walks, frankly speaking."
 2 Superintendent Richardson says, "Say that
 3 again," and you say to the superintendent, "If
 4 we ask him under caution and he doesn't
 5 reply, which we expect him ..." and Mr
 6 Richardson says, "Which is his right," you
 7 then say to Mr Richardson, "Right, and then
 8 on the basis of what we already have right
 9 now, a charge would not stick." Mr
 10 Richardson disagrees with him. Is that
 11 evidence of you and/or Mr Richardson being
 12 cajoled by the Attorney General or the DPP
 13 or is it more likely evidence of you trying to
 14 persuade Mr Richardson of your view that
 15 rather than risk an acquittal of Mr Levy it is
 16 better to use him as a witness?
 17 **A. That is evidence of signs of my giving in**
 18 **and relenting to --- or understanding where**
 19 **this was coming from. That is what I**
 20 **interpret to that. I was already aware that Mr**
 21 **Levy was causing --- or, rather, the**
 22 **intervention of Mr Levy was causing serious**
 23 **problems and that was being projected to me**
 24 **by the Attorney General.**
 25 Q. At B253, the bottom six narrative boxes

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1 at the bottom, you say, "Paul, if we give
 2 more, is it in our interests that we give
 3 something?" "Yes, he wants to give it not
 4 under caution. It's not acceptable to us, so
 5 how can we lure him in?" Superintendent
 6 Richardson gives you the views that we have
 7 all discerned. He was not a great fan, but, "If
 8 he did something wrong and knew about it,"
 9 and then he finishes, "But if he did
 10 something wrong and knew about it, well,
 11 then you are giving him all the grounds for
 12 our suspicion." You say to him, "Okay,
 13 okay, but would put him --- would put it to
 14 him and then if it's not going to incriminate
 15 himself, he would say 'no comment' so we
 16 would get the same response." "I've
 17 completely lost you there." "I follow what
 18 Ian is saying," and then you say, "If he's not
 19 going to incriminate himself --- so once he
 20 knows the incriminating data, he's going to
 21 offer an explanation and not incriminate
 22 himself." There are a couple of boxes which
 23 I will not read but at 5307, you say, "And
 24 then if we have to, if he provides that answer
 25 and after asking for more data, more pre-

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1 disclosure material or where we are coming
 2 from, because it's in our interests to square
 3 this off. One way or another, we give him
 4 that extra bit unorthodoxly because that's not
 5 what we normally do, but it's suits us. We
 6 give him that, he answers or not," and Mr
 7 Llamas asks, "Invite him or in interview?"
 8 "It suits us," you said. Does that sound like a
 9 Commissioner of Police under pressure of
 10 cajolement and pressure? Or does it sound
 11 like a Commissioner of Police who had come
 12 to the conclusion that it suited the
 13 prosecution to try and obtain evidence from
 14 Mr Levy before deciding whether to pursue
 15 him as a suspect or not?
 16 **A. That is an extract of a two hour meeting.**
 17 Q. Yes.
 18 **A. Which indicates that I have ---**
 19 Q. Yes.
 20 **A. --- softened my approach.**
 21 Q. All right.
 22 **A. --- and I have ---**
 23 Q. B255 ----
 24 **A. --- at the --- because of the ----**
 25 Q. Yes, B255, please, 5647, Mr Rocca, "It

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1 requires an explanation from Haim." Mr
 2 Llamas, "We all agree on that; we all agree
 3 it's justice demands suspect, caution thing.
 4 Now, I understand the reasons why you have
 5 done it, that was Christian and we would
 6 have done it that way" and he says that
 7 they would have done it differently. You
 8 say, "Somehow or another too engage, get
 9 him engaged." "Okay, so ..." you say, "It's in
 10 our interest, if it wasn't in our interests, well,
 11 then it's either that or (inaudible) in the
 12 situation," and Mr Llamas says, "Exactly," he
 13 is agreeing with what you are yourself saying
 14 ----
 15 **A. By forcing the situation, it meant like, if**
 16 **it doesn't --- if we can't get him to sit in an**
 17 **interview suite, he would still have to answer**
 18 **--- I am forcing the situation, it was the**
 19 **extreme action of having to arrest him. That**
 20 **is the context of that, so I am still trying to**
 21 **stick to the original plan of it being a**
 22 **voluntary interview under caution and if we**
 23 **could lure him, to use my own terminology,**
 24 **by offering him a little bit more once he's in**
 25 **interview, then we proceed.**

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1 Q. At B256 at the bottom, Mr Llamas says,
 2 "Wait a minute, I'm starting to see this all
 3 more clearly now and I think this is the key
 4 issue at the tactical level that we've got to
 5 today. We have to be seen --- yes, very
 6 strong case," Cornelio, and the other one,
 7 Sanchez [reading from document not
 8 provided] probably I think not going to ..."
 9 and Mr Rocca says, "Look, you can possibly
 10 charge him but I don't think you're going to
 11 get a conviction at the moment." Mr Wyan
 12 says, "The charging line is certainly in the
 13 balance," and you say, "That's very
 14 important. If the DPP puts that to me in
 15 writing, that he feels, because we could not
 16 do --- we could dig in our heels and say we
 17 are charging him and he's not going to
 18 prosecute, I'm not going to charge." So he is
 19 saying that Levy is --- that the likely chances
 20 are that Levy is not going to secure a
 21 conviction, "I'm not going to charge Levy," is
 22 that pressure from the Attorney General?
 23 **A. No.**
 24 Q. No.
 25 **A. But what it is, is that if we cannot**

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1 **advance the matter or, rather, if the AG and**
 2 **the DPP feel that Levy is not going to be**
 3 **prosecuted ----**
 4 Q. Oik.
 5 **A. --- and would they advance that**
 6 **information to me and I have that in writing,**
 7 **then it makes sense that I would not proceed**
 8 **with that. That would have to be their call**
 9 **not mine.**
 10 Q. I am not going to take you through all the
 11 other multiple examples of your participation
 12 and your colleagues' participation in these
 13 meetings but I make it perfectly clear that the
 14 nature and purport and objective of ----
 15 MR WAGNER: I am sorry, is this a
 16 question or a submission?
 17 SIR PETER CARUANA: Yes, but ----
 18 THE CHAIRMAN: Is this a submission
 19 dressed up as a question?
 20 SIR PETER CARUANA: No, I will
 21 abandon that, there is no point. (To the
 22 witness): The point I am making is do you
 23 agree with me, Mr McGrail, that in the
 24 context of what the chairman will find when
 25 he reads these transcripts of which I have just

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1 given you a small flavour, your
 2 characterisation of the motive, the
 3 participation of the Attorney General as some
 4 sort of conspiratorial interference with you is
 5 simply not sustainable? Do you agree with
 6 me?
 7 **A. I cannot agree with you because ----**
 8 Q. No.
 9 **A. --- I don't know what the Chairman is**
 10 **going to determine but I have my own views**
 11 **on it and it cannot be looked at in isolation.**
 12 **This has to fall in place with the berating and**
 13 **the interests around that, the subsequent**
 14 **reactions by the Attorney General where he**
 15 **is consulting with the Chief Minister and**
 16 **how to discontinue proceedings, all that.**
 17 **You can't pick up one ----**
 18 Q. Okay.
 19 **A. --- those multiple ones that you refer and**
 20 **just deal with those. You have to bring**
 21 **everything into the picture.**
 22 Q. I am going to move on, Mr Richardson, if
 23 --- I do beg your pardon, Mr McGrail, I have
 24 not tried to choose --- I would have to spend
 25 all afternoon reading things out to but we

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1 have not got time so we move on. Can we
 2 just say something about the incident at sea.
 3 THE CHAIRMAN: About what?
 4 SIR PETER CARUANA: About the incident
 5 at sea, sir, thank you. (To the witness):
 6 Yesterday --- I mean, you have described the
 7 incident at sea as a serious and critical
 8 matter; do you agree?
 9 **A. I agree.**
 10 Q. Yesterday you said that the incident was
 11 a serious matter that was --- there was
 12 reputational risk for the RGP, reputational
 13 risk for Gibraltar and serious consequences
 14 for those involved; do you agree?
 15 **A. Yes.**
 16 Q. That is what you said --- do you agree
 17 and recognise those words?
 18 **A. Not in those terms but there were various**
 19 **considerations that I had in mind, yes.**
 20 Q. Including those amongst them?
 21 **A. Sorry?**
 22 Q. Two people lost their lives, did they not?
 23 **A. Yes.**
 24 Q. Do you know of any other incident where
 25 the RGP's conduct has resulted in civilian

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<p>1 deaths?</p> <p>2 A. Yes.</p> <p>3 Q. When?</p> <p>4 A. Well, conduct; I wouldn't say conduct but</p> <p>5 I would say I am aware of deaths arising</p> <p>6 from police contact, yes.</p> <p>7 Q. An example being?</p> <p>8 A. There have been deaths in custody, for</p> <p>9 example.</p> <p>10 Q. But caused by the police or just in</p> <p>11 custody?</p> <p>12 A. I believe that subsequent enquiries have</p> <p>13 revealed that there was an element of liability</p> <p>14 on the police.</p> <p>15 Q. I put the question to you again, caused by</p> <p>16 the police or liability by virtue of insufficient</p> <p>17 care as custodian?</p> <p>18 A. Probably the latter, yes.</p> <p>19 Q. Yes, I thought so. So I put the question</p> <p>20 to you again are you aware of any case where</p> <p>21 two people have died directly as a result of</p> <p>22 police intervention causing their death?</p> <p>23 A. I am now searching my hard drive here to</p> <p>24 try and go back 36 years.</p> <p>25 Q. It does not matter very much whether you</p> <p style="text-align: center;">Page 197</p>	<p>1 superintendents, yes.</p> <p>2 Q. Yes, and that you have overall</p> <p>3 responsibility for ensuring that systems exist</p> <p>4 and are being properly applied to ensure</p> <p>5 policies and procedures are adhered to in</p> <p>6 practice? Do you agree?</p> <p>7 A. Yes.</p> <p>8 Q. You will recognise the Solis report items</p> <p>9 there. Do you agree that these were not the</p> <p>10 case as at the time of the incident at sea?</p> <p>11 A. I don't agree.</p> <p>12 Q. Okay.</p> <p>13 A. Those issues came to light as a result of</p> <p>14 the collision. As far as I was concerned,</p> <p>15 there was compliance in previous occasions</p> <p>16 and previous to the incident. There was</p> <p>17 compliance with standing orders and</p> <p>18 instructions so I cannot agree with that and if</p> <p>19 it had been brought to my notice, then that</p> <p>20 would have been addressed.</p> <p>21 Q. But overall responsibility to ensure that</p> <p>22 there are systems in place and that are being</p> <p>23 properly supervised to ensure that officers do</p> <p>24 what their instructions tell them is part of</p> <p>25 overall governance. It is not enough to say,</p> <p style="text-align: center;">Page 199</p>
<p>1 recall it or not, but you have no instant</p> <p>2 recollection of a case?</p> <p>3 A. No, but ---</p> <p>4 Q. There may be one lurking in the</p> <p>5 background?</p> <p>6 A. There could be; there could be.</p> <p>7 Q. Okay, we can agree on that. Do you</p> <p>8 agree that in addition to the human cost and</p> <p>9 reputational risk to Gibraltar there was also</p> <p>10 serious diplomatic and political risk cost?</p> <p>11 A. That was one of the strands of my</p> <p>12 conversations, yes.</p> <p>13 Q. Do you accept that under section 33 of</p> <p>14 the Police Act you are responsible for the</p> <p>15 efficient administration and governance of</p> <p>16 the police force?</p> <p>17 A. Yes.</p> <p>18 Q. So you agree that you have overall</p> <p>19 responsibility for ensuring, for example, that</p> <p>20 officers receive proper training in the</p> <p>21 execution of their duties? Do you agree?</p> <p>22 A. Yes.</p> <p>23 Q. That there is effective oversight and</p> <p>24 supervision of officers?</p> <p>25 A. Yes, overall command and</p> <p style="text-align: center;">Page 198</p>	<p>1 "I was lying in bed, how can I be</p> <p>2 responsible?"</p> <p>3 A. As far as I was concerned, and I had no</p> <p>4 reason to doubt that, the marine section was</p> <p>5 functioning as it had been and there was no</p> <p>6 cause for concern.</p> <p>7 Q. In your evidence you said that the two</p> <p>8 officers have to be accountable for their</p> <p>9 actions. Do you think that the Commissioner</p> <p>10 of Police has to be similarly accountable for</p> <p>11 failings of the force of which he has statutory</p> <p>12 responsibility for the overall governance of?</p> <p>13 A. Failings at what level are you talking</p> <p>14 about? For example, and touch wood that it</p> <p>15 never happened, if a firearms' officer were to</p> <p>16 discharge a firearm and cause a fatality, and</p> <p>17 it transpired that there are systemic failures,</p> <p>18 then, yes --- and if it transpires that it is an</p> <p>19 individual action by the officer, then that</p> <p>20 doesn't necessarily follow.</p> <p>21 Q. Is it your view that it would be</p> <p>22 unreasonable for anyone with the power to</p> <p>23 do so to lose confidence in you or anybody</p> <p>24 relevant or indeed anybody irrelevant to lose</p> <p>25 confidence in your and expect you to be</p> <p style="text-align: center;">Page 200</p>

<p>1 accountable for things that they regard as 2 failures on your watch? Is that your view of 3 overall responsibility or is it not? You may 4 have a different view. 5 A. It all depends on the issue in question. 6 Q. These issues, the ones I read out to you 7 before? 8 A. I never had ---- 9 Q. Deaths, seriousness ---- 10 A. I have never had Mr Pyle or Mr Picardo 11 raise anything with me, any concerns about -- 12 - neither did the police authority, neither did 13 the Attorney General. 14 Q. Mr McGrail, do you agree that you have 15 identified the governor as a person requiring 16 to be advised of the incident? 17 A. Do I agree if ---- 18 Q. Yes. 19 A. That I didn't ---- 20 Q. No, that you --- that he was identified by 21 Gold Command, including by you, as a 22 person that needed to be identified ---- 23 A. Yes, I identified him. 24 Q. Yes, that is fine. Has it been the case that 25 from time immemorial governors have met</p> <p style="text-align: center;">Page 201</p>	<p>1 runway, off Santa Barbara Beach." For those 2 who are not familiar with the geography of 3 Gibraltar, east is into the sea from the 4 extension of the end of the runway on the 5 eastern side of the rock. Do you agree that 6 that is what you said to the Chief Minister? 7 A. I said six nautical miles off Santa 8 Barbara, off the runway, yes, that's what the 9 text message says, yes. 10 Q. So the answer is yes. 11 A. Yes. 12 Q. I have just read it to you. Are you aware 13 that British Gibraltar territorial waters extend 14 only a few miles; that is all that the UK 15 government has claimed in respect of 16 Gibraltar? Did you know that? 17 A. Three miles to the east but ---- 18 Q. One and a half miles all around except 19 where there is a median line involved in the 20 bay, for example? 21 A. Exactly, because if it was three miles to 22 the west we would be in (Inaudible), so it 23 can't be. 24 Q. Yes, obviously, that is what the law of the 25 sea convention says, it is three or six or</p> <p style="text-align: center;">Page 203</p>
<p>1 with the Chief Minister on a monthly basis? 2 A. I do not know what governments ---- 3 Q. I beg your pardon, I mean 4 Commissioners of Police have met with 5 governors, and Chief Ministers, too, by the 6 way, I can tell you from personal experience, 7 but never mind, I misspoke, I meant 8 Commissioners of Police? 9 A. Yes. 10 Q. Why? 11 A. It's been an arrangement that has existed - 12 -- 13 Q. You did not hear my question; but why? 14 A. To provide updates on national security, 15 crime trends, anything within his 16 competence, anything that is relevant ---- 17 Q. To do with policing matters? 18 A. Yes, community matters, too. 19 Q. We heard yesterday that within nine 20 minutes of Inspector Field providing you 21 with the coordinates from the Guardia Civil, 22 you informed the Chief Minister by 23 WhatsApp, "The information suggests that 24 the collision took place outside BGTW, 25 approximately six nautical miles east of the</p> <p style="text-align: center;">Page 202</p>	<p>1 whatever you claim or the median line. So, 2 therefore, do you agree that six nautical miles 3 east of the runway off Santa Barbara Beach 4 is necessarily outside British Gibraltar 5 territorial waters? 6 A. Yes. 7 Q. If we claim three nautical miles and 8 whatever is alleged --- and this impression 9 was that it happened six nautical miles, do 10 you agree that it is necessarily outside of 11 British Waters? We do not claim six miles? 12 A. Absolutely. 13 Q. Thank you, okay. Are you aware that in 14 contrast to the United Kingdom, in respect of 15 Gibraltar at least, Spain's territorial waters 16 extends to 12 nautical miles, not three. Were 17 you aware of that? 18 A. Not particularly. 19 Q. You were not? From its coastline, so in 20 that case you would not also be aware that 21 six miles off Santa Barbara Beach is 22 necessarily in Spanish territorial waters? 23 You would not have known that either, 24 would you? 25 A. It was highly --- my suspicions were that</p> <p style="text-align: center;">Page 204</p>

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<p>1 it was in Spanish waters and I have not</p> <p>2 denied that at all. I was not certain until its</p> <p>3 confirmation.</p> <p>4 Q. Okay, so you considered it appropriate to</p> <p>5 directly and promptly feed that information</p> <p>6 to the Chief Minister, however much it may</p> <p>7 have been subject to confirmation?</p> <p>8 A. It was in response to questions that the</p> <p>9 Chief Minister was putting to me.</p> <p>10 Q. Yes, you have said that.</p> <p>11 A. And I think I have covered the question</p> <p>12 of the live feed and the dynamic situation</p> <p>13 that I was dealing with. It's not that I was ---</p> <p>14 Q. Are we agreed that you did not pass the</p> <p>15 information, yes or no will do --- are we</p> <p>16 agreed that you did not pass the information</p> <p>17 on?</p> <p>18 A. To whom?</p> <p>19 Q. To the governor?</p> <p>20 A. When he came subsequently ---</p> <p>21 Q. No, on that day, at that time or anywhere</p> <p>22 nearby?</p> <p>23 A. On that day the governor knew that it was</p> <p>24 highly probable that it had happened in</p> <p>25 Spain.</p> <p style="text-align: center;">Page 205</p>	<p>1 happened outside BGTW, the Attorney</p> <p>2 General was virtually certain that the incident</p> <p>3 happened outside BGTW and the Chief</p> <p>4 Minister was virtually certain that the</p> <p>5 incident had happened outside BGTW?</p> <p>6 A. And the governor.</p> <p>7 Q. Sorry?</p> <p>8 A. And the governor.</p> <p>9 Q. How?</p> <p>10 A. When I briefed them all --- when I</p> <p>11 briefed them in my office and I imparted the</p> <p>12 same briefing that I had imparted to the</p> <p>13 Attorney General, I went through the same</p> <p>14 information.</p> <p>15 Q. So is it your evidence that you gave the</p> <p>16 governor when he arrived later at 12.15 the</p> <p>17 same information that you had given Mr</p> <p>18 Llamas earlier before the governor had</p> <p>19 arrived and which led Mr Llamas to think it</p> <p>20 was virtually certain? Is it your evidence that</p> <p>21 that is what you told the governor when he</p> <p>22 eventually came in?</p> <p>23 A. That is my recollection, that I briefed the</p> <p>24 governor, Mr Pyle, to the same degree that I</p> <p>25 had briefed ---</p> <p style="text-align: center;">Page 207</p>
<p>1 Q. We will come on to that in a moment.</p> <p>2 Yesterday you were referred to various</p> <p>3 messages, for example, 1345, if that could be</p> <p>4 put on the screen, you also confirmed that</p> <p>5 you were satisfied with the Attorney</p> <p>6 General's use of the phrase, "virtually</p> <p>7 certain," as a result of your briefing.</p> <p>8 A. Yes.</p> <p>9 Q. Whatever it is that you briefed the</p> <p>10 Attorney General entitled the Attorney</p> <p>11 General to feel and report to the Chief</p> <p>12 Minister, or as he thought he was reporting to</p> <p>13 the Chief Minister, that you were virtually</p> <p>14 certain that it was inside. Do you agree?</p> <p>15 A. Yes.</p> <p>16 Q. Okay.</p> <p>17 A. And so I must qualify that. We came to</p> <p>18 that virtual sort of assessment having debated</p> <p>19 the information that we had available; that is</p> <p>20 why we were working also on the ---</p> <p>21 Q. Virtually certain means virtually certain,</p> <p>22 Mr McGrail. Do you therefore agree that as</p> <p>23 at 1140 am on 8 March the position was as</p> <p>24 follows: the Commissioner of Police, that is</p> <p>25 you, was virtually certain that the incident</p> <p style="text-align: center;">Page 206</p>	<p>1 Q. He had popped in unscheduled because</p> <p>2 he happened to be walking his dog past your</p> <p>3 headquarters, did he not?</p> <p>4 A. That's what he says.</p> <p>5 Q. Yes, so if he had not done that, he would</p> <p>6 have found out nothing at all from you at that</p> <p>7 time?</p> <p>8 A. Why do you say that?</p> <p>9 Q. Because if he had not been walking his</p> <p>10 dog, if he had not popped in unscheduled you</p> <p>11 would not have shared any information of</p> <p>12 any kind with him?</p> <p>13 A. That is a very unfair comment.</p> <p>14 Q. Okay, it is a question.</p> <p>15 A. It's an unfair --- it's a very unfair</p> <p>16 assumption on your part.</p> <p>17 Q. So when were you planning to call him in</p> <p>18 if he had not fortuitously popped in</p> <p>19 unscheduled?</p> <p>20 A. It may not have been the case that I</p> <p>21 would have never asked the governor to pop</p> <p>22 in. I may have gone down myself to the</p> <p>23 convent ---</p> <p>24 Q. It may be?</p> <p>25 A. Or I would have had a conversation over</p> <p style="text-align: center;">Page 208</p>

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<p>1 the phone or I could have knocked up an</p> <p>2 email and briefed him. Those are the</p> <p>3 different channels of communication I would</p> <p>4 have had.</p> <p>5 Q. Given that you were virtually certain by</p> <p>6 then that it had happened outside British</p> <p>7 waters, you must have been intending to do</p> <p>8 so imminently presumably? You must have</p> <p>9 had a plan to communicate with the</p> <p>10 governor?</p> <p>11 A. [No audible reply]</p> <p>12 Q. Mr McGrail, in these circumstances,</p> <p>13 given that the governor --- you said yesterday</p> <p>14 that whereas the governor was concerned</p> <p>15 only with the location issue, that you - and</p> <p>16 this is obviously true and correct - had many,</p> <p>17 many important issues to deal with on that</p> <p>18 day and at that time around this incident, you</p> <p>19 had many other matters on your mind, and</p> <p>20 you also said that you cannot tell what ---</p> <p>21 you cannot recall what you told Mr Pyle but</p> <p>22 it was the same as you told the AG ----</p> <p>23 A. I cannot say --- I give you the example ---</p> <p>24 -</p> <p>25 Q. --- in these circumstances --- yes, go on.</p> <p style="text-align: center;">Page 209</p>	<p>1 THE CHAIRMAN: No.</p> <p>2 SIR PETER CARUANA: No, do not. The</p> <p>3 Chairman has said that you should not.</p> <p>4 THE CHAIRMAN: What you could put to</p> <p>5 him is that the Interim Governor messaged</p> <p>6 him at 13.33.</p> <p>7 SIR PETER CARUANA: I am about to put</p> <p>8 that to him.</p> <p>9 THE CHAIRMAN: If I may say so -</p> <p>10 SIR PETER CARUANA: Or words to that</p> <p>11 effect. (To the witness) Yesterday you said</p> <p>12 that the information Mr Pyle reported to the</p> <p>13 Foreign Office at 07.57 on the 9th must have</p> <p>14 come from your face-to-face briefing with</p> <p>15 him the previous day at midday. Do you</p> <p>16 agree you said that?</p> <p>17 A. That is my only understanding. I don't</p> <p>18 think he could have got it from anywhere</p> <p>19 else.</p> <p>20 Q. Do you agree that, in fact, Mr Pyle's</p> <p>21 report to the Foreign Office of whatever you</p> <p>22 briefed him in your meeting of 8 March is</p> <p>23 actually contained in his email at 14.09, B</p> <p>24 1746, if that could be put on screen.</p> <p>25 THE CHAIRMAN: Actually, if you go to</p> <p style="text-align: center;">Page 211</p>
<p>1 A. I cannot say that I quoted coordinates. I</p> <p>2 cannot recall discussing the coordinates with</p> <p>3 the Attorney General either.</p> <p>4 Q. Okay.</p> <p>5 A. But I cannot --- so I cannot be certain</p> <p>6 about that.</p> <p>7 Q. But given that the Attorney General ---</p> <p>8 given that the governor was only focused on</p> <p>9 this and you had so many other things on</p> <p>10 your mind and given also that you cannot</p> <p>11 remember, in these circumstances, where the</p> <p>12 governor is adamant that you did not provide</p> <p>13 him with this information at the 1215</p> <p>14 meeting of the 8th do you agree that Mr Pyle's</p> <p>15 recollection is likely to be more accurate and</p> <p>16 reliable than yours?</p> <p>17 (15.26)</p> <p>18 THE CHAIRMAN: Well, I think that is a</p> <p>19 rather unfair question.</p> <p>20 SIR PETER CARUANA: You had many</p> <p>21 things on your mind. Do you agree? You</p> <p>22 cannot remember what was said. Those are</p> <p>23 the facts.</p> <p>24 THE CHAIRMAN: The evidence.</p> <p>25 THE WITNESS: Will I answer?</p> <p style="text-align: center;">Page 210</p>	<p>1 the message that Mr Pyle sent to Mr McGrail</p> <p>2 first of all, at 13.33, to thank him for the</p> <p>3 briefing, stating: "Line will be investigation</p> <p>4 ongoing, Spanish nationals. Did you say one</p> <p>5 was Portuguese? Not sure in whose water</p> <p>6 the incident took place."</p> <p>7 A. Yes.</p> <p>8 THE CHAIRMAN: To which he replied</p> <p>9 "Yes", or "Correct."</p> <p>10 A. Yes.</p> <p>11 THE CHAIRMAN: But it was not, was it?</p> <p>12 SIR PETER CARUANA: What is the other</p> <p>13 - what is the next one down? B 1346 there is</p> <p>14 a follow-up message. You can see it there on</p> <p>15 the timeline.</p> <p>16 A. All correct, and then I say --</p> <p>17 Q. In other words, he was --</p> <p>18 A. Can I?</p> <p>19 Q. Yes.</p> <p>20 A. Within another minute I say: "I am trying</p> <p>21 to clarify the exact position of the collision."</p> <p>22 I am framing it, like I explained, I am</p> <p>23 framing the incident has two key</p> <p>24 components: the pursuit and the collision.</p> <p>25 Q. You were saying to the Governor that</p> <p style="text-align: center;">Page 212</p>

<p>1 that was an accurate briefing by him to the 2 Foreign Office. Is there anything there that 3 you can see about virtual certainty? 4 A. No. 5 Q. Probably, high probability, or anything 6 else that you told others previously? 7 A. Look, what Mr Pyle wrote to the Foreign 8 Office I cannot control, but what the 9 evidence shows is that Mr Pyle tells - it 10 could be that Mr Pyle omitted that key issue 11 and he does follow up in his second email 12 which -- 13 Q. He asked you to confirm whether that 14 was correct and you told him that it was. 15 A. Sorry? 16 Q. He had run this draft past you before 17 sending it to the Foreign Office and you 18 confirmed that it was correct. 19 A. It is, but look what he -- 20 Q. Okay, in your view it is correct. 21 A. This is a rolling thing and it's - anyway. 22 THE CHAIRMAN: When he wrote to you 23 "Not sure in whose waters the incident took 24 place" -- 25 A. Incident, yes.</p> <p style="text-align: center;">Page 213</p>	<p>1 collision took place as London are keen to 2 know. I have informed them along the same 3 lines that you advised the CM, i.e. highly 4 probable that it happened outside BGTW." 5 Can I just ask you, the use of the phrase "I 6 have informed him", if your evidence is that 7 you had already told Mr Pyle the same thing 8 that you had told the Chief Minister about 9 virtual certainty as far back as the 8th, if you 10 had already told Mr Pyle that, how does this 11 message to the Governor constitute 12 informing him about anything? 13 A. Because the key issue is that he's seeking 14 confirmation, and I am not able to provide 15 that at that time. 16 Q. But all right, fine, that was your evidence 17 yesterday, but let us come to that point. So 18 do you not think in terms of the Governor's 19 sense, that you have misled him about this? 20 Do you agree with me, Mr McGrail, that the 21 issue is not whether the Governor knew or 22 found out from somebody else, that the issue 23 is whether you had told him, and I am asking 24 you this direct question. Is it your evidence 25 here that you had shared with the Governor</p> <p style="text-align: center;">Page 215</p>
<p>1 THE CHAIRMAN: Did you not think that 2 was rather misleading? You could have 3 replied: "Well, that is a bit misleading", 4 because the virtual certainty is that, in fact, 5 the actual collision occurred in Spanish 6 waters? 7 A. It's difficult for me to concede to that, sir, 8 because I've always been trained to provide 9 as accurate information possible and we are 10 talking diplomatic issues here and I want 11 accurate information to be provided. I don't 12 want it to double-back and say I had gave 13 you the wrong information from the 14 beginning. I'd rather provide accurate and 15 confirmed information. If I am criticised for 16 that, I'll accept that wholeheartedly. 17 SIR PETER CARUANA: At 11.03, if you 18 look in 1351, this is your exchange of emails 19 with the AG. 20 THE CHAIRMAN: This is rather later is it 21 not? This is 11 March. 22 SIR PETER CARUANA: Yes; I am moving 23 on. (To the witness) you say there on 11 24 March: "He Nick [this is you to Mr Llamas] 25 is asking for confirmation of where the</p> <p style="text-align: center;">Page 214</p>	<p>1 the best available information available to 2 you? 3 A. I did not share the coordinates. 4 Q. No, but the virtually certain point, that 5 was the best information available to you. 6 A. Well, no -- 7 Q. Did you share that with him? 8 A. No, no. The best information would have 9 been coordinates included, and provide it in a 10 chart and hand him with all the particulars. 11 No, I did not do that. I -- 12 Q. Or the virtually certain or until 11 March 13 the highly probable. 14 A. But what I'm saying is Mr Pyle was 15 aware and it is evidenced and the evidence 16 suggests he's aware, because why does he 17 communicate that albeit the following 18 morning? Is it that he forgot to include it in 19 the previous day? He tells -- 20 Q. He may have found it out somewhere 21 else, Mr McGrail. 22 A. Who had that information? 23 Q. Well, he will give evidence about that. 24 A. He says he doesn't remember. 25 Q. By your own admission you did not give</p> <p style="text-align: center;">Page 216</p>

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<p>1 it to him earlier because you are saying you 2 are informing him here on the 11th. 3 A. No, I'm informing him that I don't have 4 confirmation. 5 Q. I see. So why did you not give him - you 6 keep on saying exact coordinates and 7 information. 8 A. Yes. 9 Q. Hang on. Confirmation, diplomatic risk, 10 etc. What was stopping you at any time 11 saying to Mr Pyle: "Sir, it is highly - my best 12 available information is that it is highly 13 probable that it was outside British Gibraltar 14 territory water. In fact, I am virtually certain 15 of that. Actually I am of the view that it took 16 place in Spanish waters, but that is subject to 17 confirmation"? Why did you not tell him 18 that? 19 A. That is what I think the briefing entailed. 20 Q. So what did you think -- 21 THE CHAIRMAN: That is not the point. 22 SIR PETER CARUANA: All right. (To the 23 witness) You say that the Governor must 24 have known it was in British Gibraltar 25 territorial waters because he knew that you</p> <p style="text-align: center;">Page 217</p>	<p>1 diplomatic talks, it was because it had a 2 bearing on law enforcement cooperation. 3 THE CHAIRMAN: I think if you are 4 speaking in the Supreme Court a red light 5 comes on. 6 SIR PETER CARUANA: I am going to 7 leave it at that. (To the witness) On HMIC 8 are you blaming lack of resources on your 9 inability to implement your job application 10 commitment to expeditiously implement the 11 2009/16 report recommendations? 12 A. As part one of the ingredients to my 13 inability to dedicate time to that, yes. 14 Q. You could have delegated it, could you 15 not? If you were very busy you could have 16 delegated it. 17 A. No, it's not a question of -- 18 Q. To a competent -- 19 A. This is not a question of delegation. This 20 is a question of setting up a working group 21 and if I haven't got the resources available 22 then I can't do that, and it was -- 23 Q. Was your job application commitment 24 conditional? 25 A. I could have implemented the working</p> <p style="text-align: center;">Page 219</p>
<p>1 had sent two officers to Algeciras on 9 2 March at ten o'clock. 3 A. That's in support of my - to reinforce the 4 point, as otherwise why would the Governor 5 want to know - not only that, sorry. The 6 Governor wanted to know the location of the 7 incident because there was high level talks, 8 so why would the Governor want to know -- 9 I'm trying to frame this as -- 10 Q. Why you had sent two men to Algeciras. 11 A. No, that's aside. If the Governor did not 12 know that the collision had happened in 13 Spanish waters, what relevance did this have 14 to the talks? 15 Q. Well, perhaps that two Spanish nationals 16 had died, for example. 17 A. No, that is not the case. There were 18 Spanish nationals have died here before and 19 the Governor has not taken the interest. 20 Q. But does not the email that we have seen 21 say, the Guarda Civil - did not the Guarda 22 Civil say that they were taking an interest 23 regardless of where the location was? 24 A. The context of the Governor wanting to 25 know or knowing already in relation to the</p> <p style="text-align: center;">Page 218</p>	<p>1 group and compromised front line policing. 2 Q. So you are blaming lack of resources. 3 A. It has a bearing, of course it does. 4 Q. And was your job application - I mean, 5 you were a member of the senior 6 management team already, you were one of 7 the most senior officers in the force before 8 you applied, you knew what the resources 9 situation was - was your job application 10 commitment made conditional on obtaining 11 more resources? 12 A. Yes. 13 Q. In your commitment. Is that your 14 evidence? 15 A. Yes, I understand that it was - that the 16 business case that we had provided to -- 17 Q. The commitment in relation to 18 implementing the outstanding report 19 recommendations. 20 A. I don't understand the question. 21 Q. Never mind, I will move on. Did your 22 senior officers, Mr Ullger and Mr Yeats, 23 advise you not to commission that report 24 because the report would find you had not 25 done enough and the force would be exposed</p> <p style="text-align: center;">Page 220</p>

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<p>1 to criticism for it?</p> <p>2 A. Not in those terms. They advised that</p> <p>3 there was still work to do, but not with the</p> <p>4 tone that you are coming across as --</p> <p>5 Q. Did you --</p> <p>6 A. - that this is going to end up bad for us,</p> <p>7 no.</p> <p>8 Q. Can we put up A 638. I am just going to</p> <p>9 finish; this is my penultimate point. This is</p> <p>10 Mr Yeats's paragraph 31. "We felt" - his</p> <p>11 view was this and that, a better understanding</p> <p>12 of the issues. The entire command team at</p> <p>13 the time which comprised Mr Ullger, Mr</p> <p>14 Richardson, Mr Lopez, Mr Tunbridge and I,</p> <p>15 were uncomfortable with the suggestion.</p> <p>16 This was principally because. whilst we felt</p> <p>17 that it would help to address the bullying</p> <p>18 issue, the consensus was that not enough</p> <p>19 progress had been made to address the</p> <p>20 recommendations of the 2016 report</p> <p>21 following the inspection in 2015. We felt</p> <p>22 that this would expose the organisation to</p> <p>23 renewed criticism." Do you want to see what</p> <p>24 Mr Ullger says about it?</p> <p>25 A. I just wish, in hindsight, that I had taken</p> <p style="text-align: center;">Page 221</p>	<p>1 prematurely retired. He was found in April</p> <p>2 2022, 20 months, to have substantially</p> <p>3 complied with the arrears of the 2016 -- It</p> <p>4 took him just two months longer than you did</p> <p>5 not do it in, 18 - you were 18, he is 20</p> <p>6 months - to achieve compliance.</p> <p>7 THE CHAIRMAN: That does not sound like</p> <p>8 a question.</p> <p>9 SIR PETER CARUANA: Yes. (To the</p> <p>10 witness) Were the resources different?</p> <p>11 MR WAGNER: I am not sure how Mr</p> <p>12 McGrail can know about this if he had left</p> <p>13 his post.</p> <p>14 THE CHAIRMAN: I agree.</p> <p>15 SIR PETER CARUANA: And I agree too.</p> <p>16 Thank you. Consensus, there you go. One</p> <p>17 more question sir, you will permit me on the</p> <p>18 - if you will permit just two very short</p> <p>19 questions. (To the witness) Very short</p> <p>20 questions, and if you will just answer them</p> <p>21 shortly I can sit down. It is clear that the</p> <p>22 Chief Minister gave the RGP fulsome praise</p> <p>23 publicly and privately for the handling of the</p> <p>24 airport incident at the airfield. Correct?</p> <p>25 A. Yes.</p> <p style="text-align: center;">Page 223</p>
<p>1 that counsel. I just wish.</p> <p>2 Q. Yes, indeed.</p> <p>3 A. It's regrettable that I didn't, but I had my</p> <p>4 reasons and they were very well intended,</p> <p>5 and --</p> <p>6 Q. Finally on this, Mr McGrail, you took the</p> <p>7 post in May 2018. Correct?</p> <p>8 A. Yes.</p> <p>9 Q. This report came out in October 2019.</p> <p>10 Correct? The inspection rather was in</p> <p>11 October 2019. The draft report came out in</p> <p>12 February 2020. So you had been, in fairness</p> <p>13 to you, 18 months in post before the report</p> <p>14 that not enough had been done.</p> <p>15 A. By the time --</p> <p>16 Q. About the old ones, not you.</p> <p>17 A. By the time that the machinery got going</p> <p>18 with regards to the inspection, was very, very</p> <p>19 early on, within six months of my service.</p> <p>20 That's when they started approaching the</p> <p>21 GPA.</p> <p>22 Q. My point is that you had been in post for</p> <p>23 18 months before the critical inspection that</p> <p>24 you had not done enough. Mr Ullger was</p> <p>25 appointed in June 2020 when you</p> <p style="text-align: center;">Page 222</p>	<p>1 Q. And in his email --</p> <p>2 THE CHAIRMAN: We have read this.</p> <p>3 SIR PETER CARUANA: Yes. Just one</p> <p>4 sentence. (To the witness) Do you recognise</p> <p>5 the sentence: "We must not exacerbate</p> <p>6 matters but we cannot allow people to get</p> <p>7 away with having misled the RGP or having</p> <p>8 obstructed you."</p> <p>9 A. Yes.</p> <p>10 Q. Do you agree that your approach to the</p> <p>11 subsequent arrests, subsequent to this email,</p> <p>12 in Operation Apache was an exacerbation</p> <p>13 contrary to the Chief Minister's</p> <p>14 recommendation? Not exacerbating.</p> <p>15 A. Not at all. In fact, after that email I met</p> <p>16 with the Chief Minister and it was him that</p> <p>17 was expecting due process to follow, and I</p> <p>18 did report that up to Mr Yome, the</p> <p>19 Commissioner at the time. So I cannot</p> <p>20 accept that in the slightest. It was Mr</p> <p>21 Picardo egging on, and I think the evidence is</p> <p>22 very, very, very, very clear about his position</p> <p>23 with regards to encouraging --</p> <p>24 Q. Who chose - yes, please carry on.</p> <p>25 THE CHAIRMAN: Who chose the</p> <p style="text-align: center;">Page 224</p>

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<p>1 operation name, you are about to ask. 2 SIR PETER CARUANA: Yes. (To the 3 witness) I was curious to ask. Apache is a 4 tribe of native Indians in North America, are 5 they not? 6 A. I -- 7 Q. Who chose that codename for the 8 operation? 9 Q. The way codes - the way - during my 10 time the way coded names are allocated is 11 through the alphabet, similar to the 12 hurricanes and storms, and it's not - I didn't 13 even - I don't know who allocated it. 14 Q. Thankfully, it is not my task to decide 15 who are the cowboys and who are the 16 Indians. That difficult job is the Chairman's. 17 A. I wouldn't describe us as cowboys or 18 Indians. 19 Q. Neither of you. Neither is cowboys -- 20 A. I -- 21 Q. It is indicative, I am suggesting to you, of 22 the mindset. Finally, my very last question. 23 A. No, there's no mindset. There shouldn't 24 be any linkage to the operational name to the 25 professional behaviour of those officers</p> <p style="text-align: center;">Page 225</p>	<p>1 the force? Can we agree that? 2 A. It was on the media and it came out in the 3 surveys. I agree, yes, that's the reasons why I 4 called in the AAP consultants to 5 contextualise the surveys. 6 Q. Okay. 7 A. And HMIC in a way. It had a bearing on 8 that. 9 SIR PETER CARUANA: Sir, I am very 10 grateful to you for your indulgence. 11 THE CHAIRMAN: Okay, we will have a 12 break. 13 (15.45) 14 (Adjourned for a short time) 15 (15.55) 16 THE CHAIRMAN: Mr Wagner, your client 17 has been giving evidence for two days. It is 18 nearly four o'clock, it is quite hot. Do you 19 think it would be fairer to him if we 20 adjourned now and resumed tomorrow 21 morning? 22 MR WAGNER: Yes, I do. 23 THE CHAIRMAN: Well, I think we will do 24 that. In fact, we are going to catch up on the 25 time because I think it looked as if Thursday</p> <p style="text-align: center;">Page 227</p>
<p>1 engaged. 2 Q. No, nobody is blaming the officers that 3 were involved. No one is suggesting that. 4 A. Yes, they are. They are. 5 Q. No, they are criticising you for -- 6 A. No, no, there are many statements that 7 are being critical of the officers involved. 8 Q. All right, Mr McGrail. My very final 9 question relates to this bullying issues, and 10 please do not get me wrong. To save time, 11 let me tell you that I am not interested in 12 whether there was bullying or not or who 13 was responsible, to what extent, whether you 14 are responsible or not. Will you at least 15 agree with me that at the time there was a 16 general issue, indeed we have just read in Mr 17 Yeats's statement he refers to the bullying 18 issue, that it was a live issue? With what 19 degree of merit, to what extent, who was 20 responsible, it does not matter, but that this 21 was not a figment of Mr Pyle's imagination 22 that no one could possibly have ever talked 23 to him about or he could not have heard 24 about, that there was a general background 25 music, fairly or unfairly, about bullying in</p> <p style="text-align: center;">Page 226</p>	<p>1 is going to be short anyway, so we are going 2 to be back on course even if we start later 3 with the other witnesses tomorrow. 4 MR WAGNER: I am very grateful for that, 5 Chairman. 6 THE CHAIRMAN: I am asking and 7 expecting the answer "Yes". Is that all right 8 with you? 9 SPEAKER: You do not even need to ask. 10 THE CHAIRMAN: Okay, thank you. 11 (Adjourned until 10.00 am, Wednesday, 17 12 April 2024) 13 (15.56)</p> <p style="text-align: center;">Page 228</p>

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